

UNIVERSITY OF WYOMING

HIPAA POLICY 3.1

GENERAL RULES: USES AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- I. PURPOSE:** The purpose of this policy is to outline the general circumstances under which a UW Covered Component's faculty member, employee, student, trainee, or volunteer with access to protected health information (PHI) may use or disclose PHI under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the HITECH Act of 2009. This policy may also serve as a starting point for reference to other UW HIPAA policies relating to specific issues with regard to uses and disclosures of PHI by a UW Covered Component.
- II. PERMITTED USES OR DISCLOSURES OF PROTECTED HEALTH INFORMATION:** Faculty, employees, students, trainees or volunteers of a UW Covered Component are not permitted to use or disclose PHI, except in the following circumstances:
- A. **Individual:** The individual who is the subject of the PHI requests his/her own information;
 - B. **Treatment, Payment or Health Care Operations:** For the treatment, payment or health care operations of the UW Covered Component *or* for the treatment, payment or health care operations to other covered entities or other UW Covered Components (See UW HIPAA Policy 3.3(a));
 - C. **Incidental Disclosures:** Incidental disclosures that are incident to a use or disclose otherwise permitted or required by this policy and provided that the workforce member has complied with the requirements of the minimum necessary standard set forth in section IV and has appropriate safeguards for the disclosure.
 - D. **With Valid Authorization:** Pursuant to a valid authorization from the individual who is the subject of the PHI to use or disclose the PHI and the use or disclosure is in accordance with the valid authorization (See UW HIPAA Policy 3.2).
 - E. **Required Disclosures:** Pursuant to the required disclosures as set forth in section III of this policy below.
 - F. **Permitted Disclosures:** Pursuant to permitted disclosures (See UW HIPAA Policy 3.3(a)-(c)).
 - G. **Business Associate:** Disclosures to a Business Associate who has signed a Business Associate Agreement with the UW Covered Component.
- III. REQUIRED DISCLOSURES OF PHI:** There are only two instances where the law requires disclosures of PHI, as follows.
- A. **To the individual:** when a request for access to medical information or accounting of disclosures is made by the individual.
 - B. **To the Secretary of Health and Human Services ("HHS"):** for investigation and compliance purposes. Such requests must be directed to the UW campus wide Privacy Officer and the UW Office of General Counsel.
- IV. MINIMUM NECESSARY STANDARD FOR USE AND DISCLOSURE OF PHI:** UW Covered Components must make reasonable efforts to limit the scope of the PHI it uses, discloses or requests to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- A. **When the Minimum Necessary Standard Applies:** The minimum standard generally applies in three situations:
 - 1. When using PHI internally;

2. When disclosing PHI to an external party in response to a request (except for treatment-related disclosure); and
 3. When requesting PHI from another covered entity.
- B. When the Minimum Necessary Standard Does Not Apply:**
1. Information is requested by the individual who is the subject of the data, including in a response to a request for access or an accounting;
 2. Information is requested pursuant to a valid authorization by the individual who is the data subject;
 3. Compliance with standardized Health Insurance Portability and Accountability Act (HIPAA) transactions;
 4. Required disclosures to the Department of Health and Human Services for enforcement purposes;
 5. Instances otherwise required or authorized by law (e.g. mandatory child abuse reporting, etc.); or
 6. To a healthcare provider for treatment purposes.
- C. Limiting Use of or Access to PHI Within UW Covered Component by Role in Workforce:** Each UW Covered Component must identify the persons or groups who require access to PHI to carry out their duties and assign role-based access to these individuals appropriate to their job functions.
1. **Examples of persons or groups:** Physicians, nursing staff, support department staff, volunteers, etc.
 2. **Designation of Types of Access:** The UW Covered Component's Privacy Officer, in consultation with the applicable supervisor or director, shall identify and approve groups and designate types of access to PHI needed by each person or group.
 - a. Examples of items included within this designation may include:
 - i. Listing the job duties of each person or group of workforce members identified;
 - ii. Identifying access granted using a role-based approach;
 - iii. Limiting the access of each person or groups of workforce members to the minimum necessary PHI;
 - iv. Where use of the entire medical record is reasonably necessary, the designation must state so explicitly and include a documented justification;
 - b. Access designations should be consistent with any applicable UW IT and Security policies; and
 - i. Designations must be documented and permanently maintained. The UW Covered Component may attach those to this policy. This includes the initial designation for a person or group of workforce members and subsequent designations changes or updates to the designation for a person or group of workforce members due to changes in roles/responsibilities; changes in employment or changes in technology used or methods in place for limiting PHI, including changes in computer systems and the physical environment where PHI is stored;
- D. Applicability of Minimum Necessary to UW Covered Component Disclosure of PHI:**
1. **General Rule is Minimum Necessary:** The UW Covered Component must apply the minimum necessary standard to its disclosures of PHI. The Covered Component must limit the PHI disclosed to the minimum necessary to accomplish the purpose for which the disclosure is made.
 - a. **Routine and Recurring Disclosures:** The UW Covered Component should implement procedures, as applicable, for routine and recurring disclosures that limit the PHI disclosed

- C. **Identity of Public Officials:** The person making the disclosure may rely, if such reliance is reasonable under the circumstances, on any of the following to verify identity when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:
 - 1. If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;
 - 2. If the request is in writing, the request is on the appropriate government letterhead; or
 - 3. If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.
- D. **Authority of Public Officials:** A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify authority when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:
 - 1. A written statement of the legal authority under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority;
 - 2. If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority.
- E. **Exercise of Professional Judgment:** The verification requirements of this section are met if the covered entity relies on the exercise of professional judgment in making a use or disclosure in accordance with the requirements for uses and disclosures requiring an opportunity for the individual to object or agree or with the requirements for uses and disclosures to avert a serious threat to health or safety.

VI. DOCUMENTATION OF DISCLOSURES: All disclosures of PHI made by a UW Covered Component whether verbal or written must be documented in the patient's chart, hard file and/or electronic file.

- A. **Content:** For each disclosure, the following information should be noted in the client record:
 - 1. The date of the disclosure.
 - 2. The name of the entity or person who received the protected health information and, if known and not contained on the consent form, the address of such entity or person.
 - 3. A description of the protected health information disclosed.
 - 4. A brief statement of the purpose of the disclosure that reasonably informs the reader of the basis for the disclosure; or, in lieu of such statement a copy of a written request for a disclosure if any.
 - 5. The signature of the person making the notation.
- B. **Disclosures Based on Authorization of Patient or their Personal Representative:** When use and disclosure is authorized by the informed consent of the patient or their personal representative, *the following procedures must be followed:*
 - 1. The patient or their legal representative should complete and sign the appropriate Authorization Form.
 - 2. The signed Form should be copied, as applicable.
 - 3. The original, signed form or an electronic fully signed copy should be retained with the patient's medical record.
 - 4. The details of this request be must be carefully reviewed with the patient or their personal representative to ensure: The proper information is included with this release, the proper information is excluded and that the records are sent to the correct address and/or fax.

- C. **Disclosures Based on Subpoena or Court Order:** When any disclosure is made pursuant to a subpoena, court order or other document that legally authorizes the disclosure and after the Privacy Officer and UW Office of General Counsel have approved release, a copy of the authorizing document and all records released under the subpoena or order shall be retained in the medical record.
- D. **Exceptions:** The following disclosures do not need to be documented in the patient's chart:
 - 1. Disclosures to the patient,
 - 2. Use, or disclosures within the workforce of the UW Covered Component for the purpose of treatment, payment or healthcare operations.

VII. OTHER RESTRICTION ON USES AND DISCLOSURES OF PHI:

- A. **Individual's Requests for Restrictions or Confidential Communications.** Before disclosing PHI, make sure to check if the individual has requested restrictions on the use and disclosure of their PHI or requests for confidential communications and whether the UW Covered Component has granted those requests. If so, disclosure of PHI must consistent with the restrictions or confidential communications (See UW HIPAA Policies 4.3 and 4.4).
- B. **Individual Authorization Required:** Ensure before disclosing PHI, that either no authorization is needed or if an authorization is required that the authorization meets all the necessary requirements (See UW HIPAA Policy 3.2).
- C. **Prohibited Disclosures**
 - 1. **Use of Genetic Information for Underwriting.** This applies only to health plans.
 - 2. **Sale of PHI:** The sale of PHI by a UW Covered Component or business associate is generally prohibited.
- D. **Fundraising:** A UW Covered Component may not use or disclose PHI for fundraising purposes unless:
 - 1. **Authorization:** The individual has signed an valid Authorization; or
 - 2. **No Authorization:**
 - a. The only information to be used or disclosed is:
 - i. Demographic information relating to the individual;
 - ii. Dates of health care provided to the individual;
 - iii. Department of service information;
 - iv. Treating physician;
 - v. Outcomes information;
 - vi. Health insurance status
 - b. The information will only be used by the UW Covered Component for purposes of raising funds for its own benefit or will only disclose the information to a business associate or to an institutionally-related foundation for the purpose of raising funds for the UW Covered Component's benefit;
 - c. A separate statement is included in the Notice of Privacy Practices which states that the UW Covered Component may contact the individual to raise funds for the UW Covered Component.
 - 3. **Clear and Conspicuous Opportunity to Opt Out:** Fundraising communications must contain a clear and conspicuous opportunity to elect not to receive any further fundraising communications. The method for opting out must not cause the individual to incur and undue burden or more than a nominal cost. An individual's opt out will apply to the UW Covered Component. The UW Covered Component may not condition treatment or payment on the individual's choice with respect to the receipt of fundraising communications.

- a. The UW Covered Component may not make fundraising communications to an individual where the individual has elected not to receive such communications, but may provide an individual who has elected not to receive further communications with a method to opt back in to receive such communications.

VIII. REFERENCES/APPLICABLE LAW:

- A. 45 C.F.R. Section 164.502
- B. 45 C.F.R. Section 164.514

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