


Emma Eccles Jones College of Education & Human Services

POLICY INFORMATION

Document # 110	Title: Use & Disclosure of PHI Without Authorization	Print Date: 8/08/2016
Revision # 1.0	Prepared by: J. Black	Date Prepared: 1/15/2016
Safeguard: HIPAA	Approved by: Dean Beth E. Foley  <small>7AB6B86710B5491...</small>	Date Approved: 8/29/2016

I. POLICY STATEMENT

In accordance with 45 CFR§ 164.510 and 164.512 this policy shall:

- A. Outline uses and disclosures of PHI permitted by the Privacy Regulations that do not require CEHS Health Care Component's (HCC) to obtain written authorization from the patient;
- B. Identify the limited circumstances when the HCC is permitted to use and disclose a patient's PHI without obtaining the patient's written authorization; and
- C. Establish procedures governing when and how HCC may use and disclose PHI without the written authorization in accordance with the Privacy Regulations.

II. DEFINITIONS

See HIPAA Privacy Policy 100

III. AUTHORITY AND RESPONSIBILITIES

CEHS has component units that are listed as a hybrid entity in accordance with USU's HIPAA Hybrid Covered Entity Declaration. Only the health care component (i.e., covered functions) of CEHS must comply with this policy. All references in this policy to "CEHS" shall be construed to refer only to the health care component of CEHS.

IV. PROCEDURES TO IMPLEMENT

Need-to-Know or Role-based Access

CEHs must assign workforce members role-based PHI access, use and disclosure rights based upon the workforce member's need-to-know the PHI. In accordance with **117 - HIPAA Privacy Policy Minimum Necessary Standard for Use & Disclosure of PHI**, each workforce member shall be assigned a role that will designate the type of access needed to carry out their work duties.

When authorization Is Not Required for Use and Disclosure of PHI

Excluding PHI that contains mental health information, psychotherapy notes, HIV/AIDS related information, sexually transmitted disease information, or substance abuse treatment information

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(e.g., “super-confidential” health information), PHI may generally be used or disclosed without an authorization for the following purposes:

1. Internal use for treatment, payment, or health care operations.
2. Disclosure to the individual patient (and legal representatives) for treatment related purposes:
 - a) Telephone requests for the disclosure of PHI - HCC may only disclose PHI over the phone if the HCC workforce member has verified the identity and authority of the individual requesting PHI.
 - b) Requests to Mail PHI - HCC may mail a limited amount of information to patients after verifying the address provided by the patient is the same address in the EHR.
 - c) Requests for disclosures in person - HCC may provide requested PHI after verification of the requestor’s identity.
3. PHI may be shared with providers who have a known relationship to the patient, such as a physician who has referred the patient for an evaluation, or to providers to whom the HCC refers the patient.
4. Billing personnel may disclose PHI to the family/friend if the information is solely limited to the amount owed and if that person is listed on the account as a guarantor.
5. In emergency healthcare situations, PHI can be shared with non-CEHS providers who have a treatment relationship with the patient. Also, if the patient is a danger to self or others a provider is permitted to inform family members of a mental health patient who has capacity and indicates that he or she does not want the disclosure made, if the patient constitutes a “serious and imminent” threat to the health or safety of self or others, and if the family members notified are in a position to diminish or eliminate the threat. Furthermore, providers may listen to family members or other caregivers who have concerns about a patient’s health or well-being, and a provider may “factor that information into” the patient’s care—and, presumably, include this information in a determination whether the patient poses a serious and imminent risk to herself or others.
6. Limited verbal disclosure to family members or close friends directly involved in the patient’s care or payment for care unless the individual patient restricts such disclosures.
7. Disclosures to Business Associates for treatment, payment or health care operations services or assistance, when a valid Business Associate Agreement is in place.
8. Disclosures required for mandatory reporting of suspected abuse or neglect.
9. Disclosures as part of a limited data set.

Verification

Reasonable efforts to verify the identity of any patient seeking treatment as well as persons making a request that will involve a disclosure of PHI. Workforce members may accept and rely upon relevant evidence that appears reliable and reasonable. Such evidence included documents and other written representations to substantiate a claim of identity or authority, unless the HCC personnel has knowledge that there is a problem with the evidence supplied.

The following will be accepted valid identification:

1. Patient, if adult or emancipated minor: government-issued photo identification.
2. Parent or guardian if a minor: Government-issued photo identification. If the minor’s parents are divorced, separated or not married, either parent may request and receive PHI

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relating to the child unless the court has issued an order that limits the non-custodial parent's access or the provider determines there is a risk to the child. The parent or guardian with exclusive access must inform the HCC of any change that may affect the use and disclosure of PHI of the minor and provide any court documentation reflecting the change.

Exceptions: The following are some, but not all, circumstances when a parent or guardian of a minor would not be considered a legally authorized representative, and therefore not authorized to access the minor patient's PHI without the minor patient's authorization:

- a) When a minor is emancipated;
 - b) When a minor requests outpatient mental health diagnostic/evaluation services; or
 - c) When a minor requests outpatient crisis intervention therapy/counseling services.
3. The following individuals may receive PHI, if they present a legal court document validating their identity as a/an:
- a) Executor of the estate of a deceased patient, or if no executor has been appointed, the surviving spouse or next of kin;
 - b) Legally appointed guardian, or
 - c) Person appointed under a durable power of attorney with authority defined.
4. For governmental agencies, public health authorities, legal representatives, etc., the request for PHI should be made in writing on official letterhead.

Processing Requests for PHI Without an Authorization

1. Request for PHI without the authorization of the patient or his/her personal representative meeting the requirements of the circumstance listed in the Policy must be documented. Any such request must be directed to the HCC Privacy Officer.
2. The HCC Privacy Officer may initiate a release of PHI without authorization only as outlined in this Policy. Except as otherwise required by law, releases must be documented in the patient's records.
3. The HCC Privacy Officer must review the request and validate the purpose of the request and the identity of the requestor. See above section regarding verification of identity.
4. The HCC Privacy Officer may grant or deny the request.
5. If the request is denied, a denial letter or notice will be written and should include the reason for the denial and inform the requestor of the need for written authorization.
6. If the request is approved, only the minimum necessary PHI may be disclosed. A reasonable determination as to the amount of information to disclose may be made by the HCC Privacy Officer, or they may rely upon the judgment of the party requesting the disclosure as the minimum necessary, if the request is made by:
 - a) A public official or agency under the circumstances for permitted disclosure described in the policy;
 - b) Another covered entity;
 - c) A professional who is a workforce member or business associate of the covered entity holding the information; or

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- d) A researcher with appropriate documentation from and Institutional Review Board (IRB).

See **HIPAA Privacy Policy 117 Minimum Necessary Standard for Use and Disclosure of PHI** for further information.

Retention of Requests and Tracking of Disclosures

1. Requests for release of PHI without authorization must be maintained for six years from the disclosure or release date.
2. Requests must be filed in the individual's medical and/or billing record.
3. Disclosures must be traced and documented.

V. ATTACHMENTS

N/A

VI. REFERENCES

HIPAA Privacy Policy 117 Minimum Necessary Standard for Use and Disclosure of PHI

45 CFR§ 164.510

45 CFR§ 164.512