



**COUNTY OF SAN BERNARDINO
STANDARD PRACTICE**

No. 14-03 SP 06

PAGE 1 OF 7

EFFECTIVE DATE June 10, 2016

**POLICY: HIPAA POLICY
SP: Uses and Disclosures of PHI**

APPROVED
GREGORY C. DEVEREAUX
Chief Executive Officer

PURPOSE

To establish standards regarding the use and disclosure of Protected Health Information (PHI).

DEPARTMENTS AFFECTED

All County agencies, departments and Board-governed Special Districts that are determined to be covered by the Health Insurance Portability and Accountability Act (HIPAA).

DEFINITIONS

Business Associate: A person or organization that on behalf of a covered entity, other than a member of the covered entity's workforce creates, receives, maintains, or transmits PHI.

Covered Entity: A health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a HIPAA covered transaction.

Disclosure: The release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.

Health Care Component (HCC): County departments or programs that meet the definition of a Covered Entity or Internal Business Associate.

Health Insurance Portability and Accountability Act (HIPAA): A federal law designed to provide privacy and information security standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals, and other health care providers. (45 C.F.R. Parts 160 and 164)

Hybrid Entity: A single legal entity: (1) that is a Covered Entity; (2) whose business activities include both covered and non-covered functions; and (3) that designates Health Care Components.

Internal Business Associate: A County department or program that provides services to another County department or program covered by HIPAA that if it was a separate legal entity would fall within the definition of a Business Associate.

Privacy Officer: The person responsible for developing, implementing, and maintaining the County Privacy Policies and Procedures regarding the use and disclosure of PHI, responsible for receiving complaints under HIPAA, and for compliance with the HIPAA Privacy Rule.

Privacy Rule: Establishes national standards to protect individuals' medical records and other personal health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections. (45 C.F.R. Part 164 Subpart E).

Protected Health Information (PHI): Individually identifiable health information that is transmitted by, or maintained in, electronic media or any other form or medium (excludes individually identifiable health information in employment records held by Covered Entity in its role as employer).

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity or internal business associate, is under the direct control of such covered

entity or internal business associate, whether or not they are paid by the covered entity or internal business associate.

PROCEDURES

Departments within the Health Care Component (HCC) must comply with the use and disclosure restrictions detailed below. PHI shall not be used or disclosed except as permitted by law.

A. **Disclosures within the County.** The following restrictions must be complied with by departments within the HCC and those departments receiving information from an HCC department.

1. Departments within the HCC cannot disclose PHI to a non-HCC department of the County without appropriate authorization or as permitted by the Privacy Rule.
2. Non-HCC departments that create or receive PHI from an HCC department shall only use or disclose that information in a manner consistent with the HIPAA regulations.
3. If employees perform duties for both an HCC and non-HCC department, they shall only use or disclose PHI created or received in the course of their work with the HCC in a manner consistent with the HIPAA regulations.

B. **Permitted Uses and Disclosures.** Generally PHI may be disclosed as follows:

1. To the individual;
2. For treatment, payment, or health care operations, as permitted by, and in compliance with the Privacy Rule and other applicable laws or regulations;
3. Incident to a use or disclosure otherwise permitted or required by the Privacy Rule, provided that the HCC has complied with the applicable requirements of the law with respect to such permitted or required uses or disclosures;
4. Except where prohibited under 45 C.F.R. §164.502(a)(5)(i), pursuant to and in compliance with a valid authorization;
5. Pursuant to an agreement under, or as otherwise permitted by, 45 C.F.R. §164.510;
6. As otherwise permitted by, and in compliance with, the applicable provisions of the Privacy Rule.

C. **Required Disclosures.** An HCC department is required to disclose PHI:

1. To an individual when requested under, and required by the Privacy Rule;
2. When required by the Secretary of Health and Human Services to investigate or determine the covered entity's compliance with the law; or
3. When otherwise required by law.

D. **Prohibited Uses and Disclosures.** HCC departments are prohibited from disclosing PHI as follows:

1. Using or disclosing PHI that is genetic information for underwriting purposes.

2. Selling PHI.
3. Using or disclosing PHI for marketing purposes, except pursuant to, and in compliance with, 45 C.F.R. §164.508(a)(3). HCC departments proposing to use or disclose PHI for marketing purposes shall consult with the County HIPAA Privacy Officer or the HCC department's privacy officer prior to undertaking such activities to ensure compliance with the law regarding specific authorization requirements for the purpose of marketing.
4. An HCC department that has agreed to a restriction pursuant to 45 C.F.R. §164.522(a)(1) may not use or disclose the PHI covered by the restriction in violation of such restriction, except as otherwise provided in 45 C.F.R. §164.522(a).

E. Minimum Necessary Requirement. When using or disclosing PHI or when requesting PHI from another covered entity or business associate, HCC departments must make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

1. Minimum necessary does not apply to:
 - a. Disclosures to, or requests by, a health care provider for treatment;
 - b. Uses or disclosures made to the individual, or the Secretary of Health and Human Services, as required by law;
 - c. Uses or disclosures made pursuant to a valid authorization; or
 - d. Uses and disclosures required by law.
2. For any type of disclosure that an HCC department makes on a routine and recurring basis, the HCC department must implement policies and procedures that limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure. For all other disclosures, the HCC department must develop criteria designed to limit the PHI disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought and review requests for disclosure on an individual basis in accordance with such criteria.
3. An HCC department must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made when requesting such information from other covered entities. For all uses, disclosures or requests to which this section applies, an HCC department may not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure or request.

F. Limited Data Set

An HCC department may use or disclose a limited data set that meets the requirements of the Privacy Rule if the use of the limited data set is solely for the purpose of research, public health activities or health care operations. To utilize a limited data set, an HCC department must enter into a data use agreement with the limited data set recipient pursuant to the requirements of HIPAA.

HCC departments seeking to utilize a limited data set shall work with the HCC department privacy officer to ensure compliance with HIPAA requirements prior to disclosing information in a limited data set.

G. Uses and Disclosures Consistent with Notices of Privacy Practices

An HCC department that is required by the Privacy Rule to have a Notice of Privacy Practices may not use or disclose PHI in a manner inconsistent with such notice.

An HCC department that is required by the Privacy Rule to include a specific statement in its notice if it intends to engage in the noticed activity, must not use or disclose PHI for such activities unless the required statement is included in its notice.

H. Disclosures and Business Associates

A business associate (including internal business associates) may use or disclose PHI only as permitted or required by its business associate contract (or other permitted agreement pursuant to 45 C.F.R. §164.504(e)), or as required by law. The business associate may not use or disclose PHI in a manner that would violate the requirements of HIPAA if done by the covered entity, except for purposes specified in law, if such uses or disclosures are permitted by its contract or other arrangement. A business associate is required to disclose PHI: (1) when required by the Secretary of Health and Human Services to investigate or determine the business associate's compliance with the law; and (2) to the covered entity, individual or individual's designee, as necessary to satisfy a covered entities' obligations at law regarding an individual's request for PHI.

I. Disclosures by Whistleblowers and Victims of Crimes

An HCC department is not considered to have violated the requirements of the Privacy Rule if a member of its workforce or a business associate discloses PHI as a whistleblower provided that: (1) the workforce member or business associate (including an internal business associate) believes in good faith that the County has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services or conditions provided by the County potentially endangers one or more patients, workers, or the public; and (2) the disclosure is to: (i) a health care oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions, or to an appropriate health care accreditation organization; or (ii) an attorney retained by or on behalf of the workforce member or business associate for the purpose of determining legal options.

An HCC department is not considered to have violated the requirements of the Privacy Rule if a member of its workforce who is a victim of a criminal act discloses PHI to a law enforcement official, provided that: (1) the PHI disclosed is about the suspected perpetrator of the criminal act; and (2) the PHI disclosed is limited to the information listed in 45 C.F.R. §164.512(f)(2)(i).

J. Additional Federal or State Law Requirements

HIPAA establishes the minimum requirements for PHI uses and disclosures. HCC department records may be subject to additional Federal, State or contractual requirements regarding uses and disclosures that may prevent uses and disclosures otherwise permitted by HIPAA. HCC departments must follow all applicable requirements regarding uses and disclosures of PHI. Conflicts that arise in meeting all requirements will be submitted to the HCC department's privacy officer for review, and to County Counsel to resolve, if necessary.

K. Authorizations

Except as otherwise permitted or required by law, a covered entity may not use or disclose PHI without a valid authorization. When an HCC department obtains or receives a valid authorization for the use or disclosure of PHI, such use or disclosure must be consistent with that authorization. An HCC department must document and retain any signed authorization as

required by law, but for no less than six (6) years from the date of its creation, or the date when it last was in effect, whichever is later. If an HCC department seeks an authorization from an individual for a use or disclosure of PHI, the HCC department must provide the individual with a copy of the signed authorization.

PHI may be disclosed pursuant to a valid, signed authorization that meets the requirements of this Standard Practice, the provisions of 45 C.F.R. §164.508, and any other applicable State or Federal law. Generally, a valid authorization may contain elements or information in addition to the elements required by law, provided that such additional elements or information are not inconsistent with the elements required by law.

1. Valid Authorizations - A valid authorization must contain at least the following elements:
 - a. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
 - b. The name or other specific identification of the person(s) or class of persons, authorized to make the requested use or disclosure;
 - c. The name or other specific identification of the person(s) or class of persons, to whom the HCC department may make the requested use or disclosure;
 - d. A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;
 - e. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of research study", "none", or similar language is sufficient if the authorization is for a use or disclosure of PHI for research;
 - f. The signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided;
 - g. Required statements - in addition to the above requirements, the authorization must contain the following statements adequate to put the individual on notice of all of the following:
 - i. The individual's right to revoke the authorization in writing, and either:
 1. the exceptions to the right to revoke and a description of how the individual may revoke the authorization; or
 2. to the extent that the information on exceptions to the right to revoke and how to revoke the authorization are included in the Notice of Privacy Practices, a reference to the Notice;
 - ii. The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:
 1. The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the

authorization when the prohibition on conditioning of authorization permitted by law applies; or

2. The consequences to the individual of a refusal to sign the authorization when the covered entity can, by law, condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization;
 - iii. The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by the applicable law;
 - h. The authorization must be written in plain language.
2. Defective Authorizations - An authorization is not valid if the document submitted has any of the following defects:
 - a. The expiration date has passed or the expiration event is known by the HCC department to have occurred;
 - b. The authorization has not been filled out completely, with respect to a required element, if applicable;
 - c. The authorization is known by the HCC department to have been revoked;
 - d. The authorization is an unpermitted compound authorization;
 - e. Any material information in the authorization is known by the HCC to be false.
3. Compound Authorizations - An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization except as permitted by law. HCC departments wishing to use compound authorizations shall get the proposed authorization reviewed and approved by the HCC department privacy officer prior to use.
4. Prohibition on Conditioning of Authorizations - Generally an HCC department may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization except as permitted by law. Exceptions are permitted for research-based treatment, eligibility, underwriting and risk determinations, or when health care is created solely for the purpose of disclosure to a third party.
5. Revocation of Authorization - An individual may revoke an authorization provided to an HCC department at any time, provided that the revocation is in writing, and except to the extent that: 1) the HCC department has taken action in reliance thereon; or 2) if the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.
6. Authorization Required - An HCC must obtain a valid authorization for the following specific uses or disclosures:
 - a. Psychotherapy notes (as defined in 45 C.F.R. §164.501.)
 - b. Marketing

c. Sale of PHI

If an HCC department wishes to use or disclose PHI or conduct the activities listed above, the HCC department privacy officer must be consulted prior to the use or disclosure.

HCC departments are responsible for creating a standardized authorization form to be used within the HCC department. HCC departments may have additional legal requirements relating to the form and substance of an authorization for their specific records and shall address those additional requirements in the standardized authorization form. Questions of sufficiency of any authorization are to be determined by either the HCC department privacy officer or County Counsel.

In the event that an HCC department receives more than one authorization or permission from an individual, and the authorizations appear to be in conflict with each other, the HCC department will abide by the more restrictive authorization until the conflict is resolved with the individual who is the subject of the authorization.

This Standard Practice shall not be construed as relieving departments of their responsibility to develop full and complete departmental policies, procedures, and practices necessary to expand and tailor this overall County Policy to the particular needs of their departments.

LEAD DEPARTMENT

Human Resources