

## **Use and Disclosure of Protected Health Information**

### **Guidance Document**

This Guidance Document may be utilized when managing the use and/or disclosure of Protected Health Information (PHI) in the particular situations described below.

Documentation of any disclosures made pursuant to this policy will be made and included in the patient's medical record. (Refer to the Accounting of Disclosures Policy for a description of the required documentation)

#### **Health and Safety**

Limited PHI will be disclosed to prevent a serious threat to health or safety. If a disclosure of the patient's PHI is made to prevent a serious threat to health or safety, the PHI disclosed will be limited to:

1. the patient's statement in which they admitted participating in a crime
2. the patient's name and address
3. the patient's date and place of birth
4. the patient's social security number
5. the patient's ABO blood type and rh factor, if known
6. the date and time of the patient's treatment
7. the date and time of death, if applicable; and
8. a description of any distinguishing physical characteristics including height, weight, sex, race, hair and eye color, presence or absence of facial hair (i.e. beard or moustache), scars and tattoos.
9. Special protections of PHI such as genetic or HIV/AIDS information will not be disclosed

#### **HIV and Aids Information**

Prior to conducting any HIV-related test of an individual patient, the patient's health care provider will obtain written informed consent from the patient or the patient's legally authorized representative if the patient does not have the capacity to consent.

1. Within the order for an HIV-related test, the health care provider will certify that the patient or their legally authorized representative has provided written informed consent for the test.
2. The informed consent for an HIV-related test will include at least the following elements:
  - a. an explanation of the test, including its purpose, the meaning of its results, and benefits of early diagnosis and medical intervention;
  - b. an explanation of the procedures to be followed, including that the test is voluntary, that consent may be withdrawn at any time, and a statement advising the patient that anonymous test is available; and
  - c. an explanation of the confidentiality protections afforded confidential HIV-related information including the circumstances under which and classes of persons to whom disclosures of such information may be required, authorized or permitted by law.
3. Written informed consent needs to be obtained prior to the HIV-related test if performed
  - a. by a health care provider or facility in relation to procuring, processing, distributing or using a human body or body part for medical research or therapy;
  - b. for the purposes of research provided the test is performed in a manner by which the identity of the test patient is not known and may not be retrieved by the researcher; or

- c. on a deceased person when the test is performed to determine the cause of death or for epidemiological purposes.
- 4. A patient's HIV/AIDS information may be used and/or disclosed only for assessing or managing the patient's health
  - a. for purposes of providing treatment to, including counseling or receiving payment for such treatment of the patient
  - b. for purposes of maintaining or managing medical records on behalf of the health care provider; or
  - c. if the patient has signed an informed written consent to participate in an approved research study.
- 5. A patient's HIV/AIDS information will not be disclosed except to the following:
  - a. the patient or when the patient lacks the capacity to consent, a person legally authorized to consent to health care for the patient
  - b. any person pursuant to a valid written authorization signed by the patient
  - c. another health care provider or facility when knowledge of the HIV/AIDS information is necessary to provide appropriate care or treatment to the patient, a child of the patient, a contact of the patient or a person authorized to consent to health care for a contact of the patient
  - d. a health care facility or health care provider in relation to the procurement, processing, distribution, use of human body or body part for use in medical education, research, therapy or transplantation
  - e. a medical staff committee or accreditation or oversight review organization provided the recipient of the HIV/AIDS information will not further disclose the confidential information except as required by law
  - f. a federal, state, county or local health care officer when such disclosure is required by federal or state law
  - g. an authorized foster care or adoption agency, provided, however, such agency agrees not to further disclose the information except as required by law
  - h. pursuant to a court order
  - i. to an employee or agent of the Parole Division, Probation and Correctional Alternatives Division or the Commission of Correction or Medical Director of a local correctional facility; or
  - j. a legal guardian appointed by a court to represent a minor with respect to the minor's HIV information

### **Minors**

A minor's right to consent for or refuse HIV testing is based on their capacity to understand what an HIV antibody test actually tests for the implications and consequences of being HIV infected and why they are at risk. A minor has the right to anonymous testing and treatment for HIV/AIDS.

1. If a minor requests and receives anonymous testing and treatment for HIV/AIDS (without parental notification or consent) and the minor's personal representative requests access to or copies of the minor's HIV/AIDS-related PHI, the health care provider will not release it or make it available without first obtaining written authorization from the minor.
2. If the health care provider reasonably believes the minor has been or is subject to domestic violence, abuse and/or neglect by the minor's personal representative and that keeping the minor's PHI related to the abuse confidential is in the best interests of the minor, the health

care provider may refuse to release or provide access to the minor's abuse-related PHI to the minor's personal representative.

If a health care provider receives a request for a minor's PHI from the minor's school, the health care provider will disclose only the minimum amount of PHI necessary to either:

1. to the minor's personal representative to be provided to the minor's school; or
2. if the PHI includes or is of a type described in this policy, to the minor who may then provide it to the school
  - a. If the school requests the minor's PHI be sent directly from the health care provider, before disclosing the PHI to the school, the health care provider will either:
    - obtain the minor's personal representative's written authorization for the release; or
    - if the PHI includes or is of a type described in this policy, obtain the minor's written authorization for the release.

### **Disclosures of Protected Health Information over the Telephone**

When a patient calls and requests PHI about themselves, the workforce member shall only provide the minimum amount of PHI necessary when they have confirmed the caller is the patient.

- The workforce member will, prior to disclosing PHI, ask specific questions that could only be answered by the patient (e.g., patient's date of birth, address, father's name or mother's name).
- The workforce member may elect to place a return call to the patient using the telephone number documented in the patient's file rather than immediately disclosing the patient's PHI to a caller initiating the telephone conversation.

#### **1. Requests from or disclosures to a caller who is not a patient**

If the caller states they are an immediate family member (i.e., father, mother, child, and sibling) of the patient, the workforce member will notify the health care provider to determine what information may be provided to the individual.

- a. Do Not disclose PHI without the patient's permission
- b. Provide only directory information about the patient. Directory information is defined as:
  - the patient's name;
  - the patient's location; and
  - the patient's condition described in general terms that do not communicate specific PHI about the patient (e.g., "good", "stable", "critical")

#### **2. Calls to patient's home**

CUHC workforce members may not leave messages regarding treatments, diagnostic or testing information on a patient's answering machine. Workforce members leaving appointment reminders may only provide the name of the provider, the office phone number or the location.

- a. In an emergency all efforts should be used to contact a patient and provide important treatment information.
- b. Documentation of any disclosures of PHI made over the telephone will be maintained for a minimum of six (6) years and may be stored in the patient's file or on a disclosures log.

## De-identification and Re-identification of Protected Health Information

Health Information is not individually identifiable when Expert Determination and Safe Harbor methods are utilized.

- The Expert Determination method is when a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable: determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and documents the methods and results of the analysis that justify such determination.
- The Safe Harbor method is when the following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:
  - (A) Names
  - (B) All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP code, and their equivalent geocodes, except for the initial three digits of the ZIP code if, according to the current publicly available data from the Bureau of the Census:
    - (1) The geographic unit formed by combining all ZIP codes with the same three initial digits contains more than 20,000 people; and
    - (2) The initial three digits of a ZIP code for all such geographic units containing 20,000 or fewer people is changed to 000
  - (C) All elements of dates (except year) for dates that are directly related to an individual, including birth date, admission date, discharge date, death date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older
  - (D) Telephone numbers
  - (L) Vehicle identifiers and serial numbers, including license plate numbers
  - (E) Fax numbers
  - (M) Device identifiers and serial numbers
  - (F) Email addresses
  - (N) Web Universal Resource Locators (URLs)
  - (G) Social security numbers
  - (O) Internet Protocol (IP) addresses
  - (H) Medical record numbers
  - (P) Biometric identifiers, including finger and voice prints
  - (I) Health plan beneficiary numbers
  - (Q) Full-face photographs and any comparable images
  - (J) Account numbers
  - (R) Any other unique identifying number, characteristic, or code; and
  - (K) Certificate/license numbers

De-identified health information created following these methods is no longer considered PHI and thus, is no longer protected by the Privacy Rule. However, if a unique code is assigned to the set of de-identified health information to permit re-identification, the health information would meet the definition of PHI and would be protected by the Privacy Rule.

## Disclosures of Protected Health Information Required by Law

Disclosure required by law. PHI may be Used or Disclosed if and to the extent required by law.

- Public health activities. PHI may be used or Disclosed to a public health authority that is authorized by law to collect or receive such information for preventing or controlling disease, injury or disability, including public health issues, vital records, child or adult abuse or neglect; adverse food or drug events, and investigations of work-related illnesses or injuries as required by law.
- Victims of abuse, neglect, or domestic violence. PHI may be Used or Disclosed to a government authority, including a social service or protective service agency, which is investigating a report of abuse, neglect or domestic violence to the extent the disclosure is required or permitted by law. In situations where the practice involved in the treatment of the patient will disclose to the appropriate government authority of the possible abuse, neglect or domestic violence, the practice is encouraged to consult with the Chief Privacy Officer and/or the Office of the General Counsel for guidance around the proper reporting. In addition, the practice should provide notification to the individual that a disclosure has been or will be made regarding the abuse, neglect, or domestic violence.
- Health oversight activities. With certain exceptions, PHI may be Used or Disclosed to a health oversight agency for oversight activities authorized by law, including audits, civil, administrative or criminal investigations or proceedings, inspections, licensure or disciplinary actions, or other government benefit or regulatory programs (e.g., The Joint Commission).
- Judicial and Administrative Proceedings. PHI may be Disclosed in the course of a judicial or administrative proceeding in response to an order of a court or administrative tribunal, a subpoena, discovery request or other lawful process with certain assurances.
- Law Enforcement Purposes. PHI may be Disclosed for law enforcement purposes to a law enforcement official under certain conditions. Law enforcement reasons may include (1) limited information requests for identification and location purposes; (2) pertaining to victims of a crime; (3) suspicion that death has occurred as a result of criminal conduct; (4) in the event that a crime occurs on the site of the practice; and (5) medical emergency when it is likely that a crime has occurred; and (6) reporting certain types of wounds or other physical injuries. In situations where the disclosure of information is to a correctional institution or law enforcement agency that has custody of the patient (inmate), a representative of the correctional institution or law enforcement agency should contact the Chief Privacy Officer or General Counsel.
- Decedents. PHI regarding decedents may be Disclosed to coroners, medical examiners and funeral directors if necessary to carry out the duties of their positions.
- Cadaveric organ, eye, or tissue donation. PHI may be Disclosed to organ procurement, banking or transplantation organizations to facilitate organ, eye or tissue donation and transplantation.
- Research. PHI may be Used for research without the individual's authorization if the University and Medical Center Institutional Review Board grants a waiver of the requirement for authorization. For more complete information please refer to <https://research.columbia.edu/content/clinical-trials-office>
- Threats to Health or Safety. PHI may be Used or Disclosed under certain circumstances if a health care provider believes in good faith that the use or disclosure is necessary to protect a person or the public.
- Specialized Government Functions. PHI may be Used or Disclosed for specialized government functions such as military and veterans activities, security and intelligence activities, protective

services for officials, medical suitability, and correctional institutions. In situations where the patient will not or is unable to authorize the release of PHI, the military organization or protective service should contact the Chief Privacy Officer or General Counsel.

- Workers' Compensation. PHI may be disclosed to workers' compensation insurers and others involved in workers' compensation systems where the patient provides their authorization for the release of information. In situations where the patient is unable to authorize the release of PHI, the PHI may be Used or Disclosed to the extent required to comply with workers' compensation and similar programs.