

**County Of San Diego
Health and Human Services Agency (HHS)**

**Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: Privacy, Disclosure, Family**

**SUBJECT: Disclosure of Information to Family
Members and Friends of A Patient**

**NO: HHS-L-12
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REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a process to identify circumstances of when disclosure of an individual's (patient's/resident's/client's) protected health information (PHI) may be provided to the family and/or friends of those individuals.

BACKGROUND: County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

DEFINITIONS

Note: The definitions below are in compliance with the HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Designated Record Set:

1. County as Health Care Provider: Records maintained by or for the County that are used, in whole or in part, by or for the County to make decisions about individuals. This designated record set includes:
 - Patient/resident/client medical records, including images (e.g. radiology films, fetal monitor strips, electrocardiograph (EKG) tracings, electroencephalograph (EEG) tracings, imaged records of procedures, and the like); and
 - Patient/resident/client billing records.

2. County as Health Plan: Records maintained by or for the County that are used, in whole or in part, by or for the County to make decisions about individuals. This designated record set includes the following records:
 - Enrollment;
 - Payment;
 - Claims adjudication; and
 - Case or medical management systems.

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The designated record set **excludes** information compiled by the County that is not used to make decisions about specific individuals, and includes, but is not limited to, information compiled for peer review, quality assurance, and business operations.

Individually Identifiable Health Information: Information that is created or received by the County, identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of physical or mental health care to an individual.

This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

Legal Representative: An individual's legal representative may include the following:

- Conservator of the Person – Court appointed;
- Attorney-in-Fact for Health Care – Holder of a valid Durable Power of Attorney for Health Care;
- Guardian of the Person – Court appointed;
- Parent – Unemancipated minor where the minor does not have the authority to authorize the release of records on his or her own behalf;
- Decedent's Personal Representative – Court appointed;
- Executor of a Decedent's Estate – Court appointed;
- Administrator of a Decedent's Estate – Court appointed;
- Personal Representative – Court appointed; or
- Beneficiary of a Decedent's Estate – Must provide adequate documentation that the person is a beneficiary of the decedent's estate and that no other person has the authority to prevent the release of the protected health information (PHI).

Note: This policy uses the term "legal representative." That term is meant to be synonymous with the Privacy Rule term "personal representative." This policy uses the term "legal representative" because the term "personal representative" has a separate and distinct legal meaning under California law.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained electronically or by any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include records of (1) students who are 18 years or older or are attending post-secondary educational

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institutions, (2) maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

POLICY: In compliance with state and federal laws and regulations, the County may disclose an individual's (patient's/resident's/client's), PHI to family and/or friends within limited circumstances. Individuals will be given an opportunity to agree or object to having their health information shared with family and/or friends.

PROCEDURES: *Uses and disclosures for involvement in individual's (patient's, resident's, or client's) care and for notification purposes.*

Permitted uses and disclosures.

1. The County may disclose to a family member, other relative, or a close personal friend of the individual, or any other person **identified by the individual**, the PHI directly relevant to such person's involvement with the individual's care or payment related to the individual's health care.
2. The County may use or disclose PHI to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death.

Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by the above paragraph and has the capacity to make health care decisions, the County may use or disclose the PHI if it:

1. Obtains the individual's agreement;
2. Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
3. Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

Limited uses and disclosures when the individual is not present. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the County may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of

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the individual and, if so, disclose only the PHI that is directly relevant to the person's involvement with the individual's health care. The County may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.

Use and disclosures for disaster relief purposes. The County may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by this policy and procedure. The requirements in this section relating to disclosures when the individual is present and limited disclosures when the individual is not present apply to such uses and disclosure to the extent that the County, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

QUESTIONS/INFORMATION: Privacy Officer of the County of San Diego

SUNSET DATE: This policy will be reviewed for continuance by July 27, 2010.

Approved:



Jean M. Shepard, Director
Health and Human Services Agency