

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

**Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: privacy, fundraising**

SUBJECT: Fundraising

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DATE: July 27, 2007

REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a process on how to engage in fundraising activities where the disclosure of protected health information (PHI) may be involved.

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 HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Individually Identifiable Health Information: Information that is created or received by the County, that 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;

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- 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 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 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 use, or disclose to a business associate or to an institutionally related foundation, specified PHI for the purpose of raising funds for the County's benefit, without an authorization.

PROCEDURES:

1. Information that May Be Disclosed - The following information may be disclosed:
 - a. Demographic information relating to an individual; and
 - b. Dates of health care provided to an individual.
2. Statement in Notice of Privacy Practices

The County may not use or disclose PHI for fundraising purposes as otherwise permitted by this policy and procedure unless a statement that the County may contact the individual regarding fundraising is included in the County's notice of privacy practices.

3. Procedures for Individual to Opt Out of Fundraising Activities

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The County will include in any fundraising materials it sends to an individual a description of how the individual may opt out of receiving any further fundraising communications from the County. The County will make reasonable efforts to ensure that individuals or their legal representatives who decide to opt out of receiving future fundraising communications are not sent such communications.

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