

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

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

**SUBJECT: Minimum Necessary Disclosures
of Protected Health
Information**

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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 apply the “minimum necessary” standard to disclosures of protected health information.

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).

Disclosure: Release, transfer, or provision of access to protected health information outside the County.

Health Care Operations: Any of the following activities:

- Internal performance improvement activities, excluding research;
- Reviewing the competence or qualifications of health care professionals;
- Underwriting, premium rating, and other activities related to health insurance contracting;
- Medical review, legal services, and auditing;
- Business planning and development; or
- Business management and general administrative activities.

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 health care to an individual.

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

Payment: Activities undertaken to obtain or provide reimbursement for health care services, including:

- Billing, claims management, and collection activities;
- Review of health care services for medical necessity, coverage, appropriateness, or charge justification; or
- Utilization review activities.

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.

Treatment: Provision, coordination, or management of health care and related services by one or more health care providers, including:

- Management of care by a provider with a third party;
- Consultation between health care providers relating to a individual; or
- Referral of a individual from one provider to another.

POLICY: The County will make reasonable efforts to limit the amount of PHI requested, used or disclosed to that which is minimally necessary to meet the user's needs.

Minimum necessary standards will **not** be applied to the following:

- Disclosures to or requests by a healthcare provider for treatment or to the individual;
- Uses or disclosures made to the individual as part of the individual's request to access his or her PHI (see Policy HHSa-L-1, Individual Access to Protected Health Information in the Designated Record Set) or as part of the individual's request to amend his or her PHI (see Policy HHSa-L-2, Request for Amending Protected Health Information);
- Uses or disclosures made pursuant to a valid authorization (see HHSa-L-9, Authorization for Use and Disclosure of Protected Health Information);

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- Disclosures to the Secretary of Health and Human Services for enforcement compliance (see Policy HHSA-L-7, Disclosures to the Secretary of the United States Department of Health and Human Services);
- Uses or disclosures that are required by law (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or an Opportunity to Agree or Object is Not Required); and
- Uses or disclosures that are otherwise required for compliance with the HIPAA Privacy Rule.

PROCEDURES:

1. Disclosures of Minimally Necessary PHI

Based on a review of its routine disclosures, the County has developed criteria to limit the amount of PHI disclosed to the information reasonably necessary to meet the requester's needs. A table of routine requests and disclosures is provided in Exhibit A. Any requests not included in this table will be handled as non-routine disclosures, as outlined in the next section.

If a request does not indicate the specific information needed, a standard "abstract" of information will be disclosed. For inpatient records, the standard abstract includes the following (if present in the individual's record):

- Discharge summary;
- History & physical examination;
- Consultation reports; and
- Emergency department record.

2. Non-Routine Disclosures to External Requesters

All non-routine requests for disclosures will be referred to the program/unit manager or designee for review. Criteria to be considered in determining the amount of information to be disclosed are provided in Exhibit B.

3. Redisclosure of Information from Other Healthcare Providers

In some cases, the County may be in possession of copies of individuals' PHI from other healthcare providers, particularly in the case of individuals who are transferred to the County for continuing care.

Redisclosure of PHI from other healthcare providers will be treated as a disclosure of PHI created by the County and will be based on this policy and procedure.

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When asked to provide certified copies of medical records, the County will only certify information it has created or incorporated into the County record. The County will not certify records from another provider, as it cannot attest to the accuracy of those records. The County may, however, certify that the records provided were records in its possession.

4. Requests for Entire Medical Records

The County will not disclose an entire designated record set except when the entire record is specifically requested and the disclosure is not subject to the minimum necessary standard or unless the disclosure is justified as the amount that is reasonably necessary to accomplish the purpose of the disclosure.

5. Reliance on Representations By Individual or Entity Requesting PHI

The County may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

- a. Making a disclosure to a public official as allowed by these policies and procedures and the HIPAA Privacy Rule (see Policy HHSa-L-13, Uses and Disclosures for Which and Authorization or Opportunity to Agree or Object is Not Required) where the public official represents that the information requested is the minimum necessary for the stated purpose(s);
- b. The information is requested by another entity subject to the HIPAA Privacy Rule;
- c. The information is requested by a professional who is a member of the County's workforce or is a business associate of the County and the disclosure is for the purpose of providing professional services to the County, if the person represents that the information requested is the minimum necessary for the stated purpose(s); or
- d. Documentation or representations that comply with the research provisions of these policies and procedures have been provided by a person requesting the information for research purposes.

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

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

ATTACHMENTS: Exhibits A and B


Approved: 
Jean M. Shepard, Director
Health and Human Services Agency

Exhibit A

COUNTY OF SAN DIEGO MINIMUM NECESSARY DISCLOSURES OF PROTECTED HEALTH INFORMATION

ROUTINE REQUESTS AND DISCLOSURES—Individual Requests

REQUESTER	AUTHORIZATION REQUIRED?	PURPOSE	DISCLOSURES*
Adult Protective Services	No: Disclosure required by law	Report suspected adult abuse or neglect, as required by law	Information required by law
Ambulance company	No: Disclosure for payment	Obtain demographics and insurance information for billing	Face sheet with patient demographics and insurance information
Attorney	Yes, unless a valid subpoena or court order is issued	Evaluate individual's medical condition in support of a lawsuit	Specific information requested
Children's Protective Services	No: Disclosure required by law	Report suspected child abuse or neglect, as required by law	Information required by law
Coroner	No: Disclosure required by law	Investigate a suspicious death	Specific information requested
Public Health	No: Disclosure required by law	Report animal bites and communicable diseases, as required by law	Information required by law
Department of Justice	No: Disclosure required by law	Report firearms prohibitions for patients who have been involuntarily committed for psychiatric care	Information required by law
Department of Licensure	No: Disclosure required by law	Respond to complaint investigations	Information required by state investigator
Department of Motor Vehicles	No: Disclosure required by law	Notify if patient under conservatorship has driving privileges suspended by a court	Information required by law
Disability determination	Yes	Evaluate individual's medical condition in support of disability benefits	Specific information requested
Employer	Yes	Evaluate drug usage for pre-employment screening	Drug test results
Insurance company	No: Disclosure for payment	Substantiate care provided for payment	Specific information requested
Life insurance company	Yes	Evaluate individual's medical condition for issuance of a life insurance policy	Discharge summary(ies) for specified period of time.
Ombudsman	No: Disclosure required by law	Evaluate patient incidents (abuse, falls, significant weight loss)	Information required by law
Receiving facility for patient transfer	No: Disclosure for treatment	Provide information for continuity of care	Information required by law
Regional Immunization Registry	No: Disclosure required by law	Track immunizations by individual child	Information required by law
School	Yes	Evaluate child's medical condition for school activities	Letter from physician or discharge summary
Social Security Administration	No: Disclosure required by law	Report admission to and discharge from geriatric treatment facility	Information required by law
Workers' Compensation	No: Disclosure required by law; also for payment	Evaluate individual's medical condition for benefits	Discharge summary; other information as requested and allowed by state law

* Documents listed are those typically found in an inpatient medical record. Documents with similar content should be disclosed from other types of records, such as outpatient or emergency department records.

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ROUTINE REQUESTS AND DISCLOSURES—Group Disclosures

REQUESTER	AUTHORIZATION REQUIRED?	PURPOSE	DISCLOSURES
Bureau of Narcotic Enforcement	No: Disclosure required by law	Track Schedule C-II narcotic prescriptions	Information required by law
Collection agency	No: Disclosure for payment/healthcare operations	Obtain payment on past due accounts	File of patient names, addresses, dates of service, and amount owed
Employer	No: Disclosure of de-identified data	Evaluate utilization	Plan summary information (aggregate information not individually identifiable)
Office of Statewide Health Planning (OSHDP)	No: Reporting required by law	Evaluate healthcare trends	Information required by law
State Cancer Registry	No: Reporting required by law	Evaluate incidence and survival of cancer cases	Information required by law

Exhibit B

**COUNTY OF SAN DIEGO
MINIMUM NECESSARY DISCLOSURES OF PROTECTED HEALTH INFORMATION**

CRITERIA FOR EVALUATING NON-ROUTINE REQUESTS AND DISCLOSURES

In evaluating non-routine requests, the County will assess the reasonableness of the request, using the following criteria:

CRITERION	POINTS FOR CONSIDERATION
Specificity of request	If the request is general, narrow the disclosure to specific documents or periods of time that would fit the purpose of the request.
Purpose of request	If there is a clearly stated purpose, disclosures should relate to the purpose. If there is no clearly stated purpose, it may be necessary to ask the requester for clarification of the specific information needed.
Impact to patient	Could the disclosure potentially harm the individual, such as introduce discrimination based on health status? Would the disclosure help the individual?
Use of de-identified information	Could the requester's needs be met with de-identified or aggregate information that does not identify specific individuals?
Technology available to limit disclosure	Are there ways to limit the amount of information disclosed, using existing technology?
Cost of limiting disclosure	If there is a way to limit the amount of information disclosed, is the cost involved reasonable?
Other factors	Are there any other factors or circumstances that should be considered in determining the most appropriate way to respond to this request?