

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

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

SUBJECT: Accounting of Disclosures of Protected Health Information

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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 on how to respond appropriately to individuals (patients/residents/clients) or their legal representatives who request an accounting of disclosures of the individuals 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 the HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

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.

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

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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 track disclosures of PHI, as required by federal regulations, and provide accountings of such disclosures to individuals upon request.

The disclosure of an individual's PHI **does not** have to be tracked or accounted for if the disclosure was an appropriate disclosure within one of the following areas:

- Disclosures made for treatment, payment, or other health care operations (see Policy HHSa-L-8, Use and Disclosure of Protected Health Information to Carry Out Treatment, Payment and Health Care Operations);
- Disclosures made to the individual about the individual (see Policy HHSa-L-1, Individual Access to Protected Health Information in the Designated Record Set);
- Disclosures authorized by the individual (see Policy HHSa-L-9, Authorization for Use and Disclosure of Protected Health Information);
- Disclosures made for facility directories (see Policy HHSa-L-11, Facility Directories);
- Disclosures made for national security or intelligence purposes (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);

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- Disclosures to correctional institutions or law enforcement officials for individuals who were imprisoned or in police custody (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures made prior to April 14, 2003;
- Disclosures that do not identify individuals (see Policy HHSa L-21, Limited Data Sets and De-identification of Protected Health Information);
- Disclosures that are part of a limited data set (see Policy HHSa L-21, Limited Data Sets and De-identification of Protected Health Information); and
- Disclosures that are incidental to another permitted use or disclosure.

The following disclosures of PHI **will** be tracked by the County for accounting purposes:

- Disclosures that are required by law (including reports of suspected adult abuse/neglect, suspected child abuse/neglect, domestic violence, communicable diseases, animal bites, and disclosures relating to workers' compensation and to law enforcement) (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures for judicial or administrative proceedings (including responses to subpoenas and court orders) (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required); and
- Disclosures made for research, unless authorized by the individual or his legal representative (see Policy HHSa-L-13 Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required).

Simplified accounting procedures may be used in cases involving 50 or more records when an Institutional Review Board (IRB) or Privacy Board has waived the requirement for the individual's authorization.

PROCEDURES:

1. Contents of Accounting

The accounting will be in writing and include the following information for each disclosure:

- Date of the disclosure;
- Name of the person or entity who received the PHI and the address, if known;
- A brief description of the PHI disclosed; and
- A brief statement of the purpose for the disclosure. (In lieu of a statement, the County may, at its option, provide a copy of the written request for disclosure.)

Unless otherwise specified in the request for an accounting, all disclosures within the previous six (6) years for which the County must account will be provided in the accounting. If the

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individual asks for an accounting covering a period of less than the previous six (6) years, the County will provide an accounting as appropriate.

2. Handling Requests for Accounting

All requests for accountings for disclosure will be handled through the program/unit's Health Information Management or similar function. Disclosures for which an accounting must be made will be recorded into the program/unit's computer database or by completion of the County's "Report of Disclosure of Patient Information" form for each disclosure. These records will be maintained for a minimum of six (6) years from the date of the disclosure.

3. Fees

The first accounting in any 12-month period will be provided without charge. The actual cost incurred by the County will be charged for each subsequent accounting requested during the 12-month period. The County, however, will inform the individual in advance of the estimated fee and provide the individual with an opportunity to withdraw or modify the request for the subsequent accounting so that the individual may avoid or reduce the fee.

4. Multiple Disclosures

If the County has made multiple disclosures of PHI to the same person or entity for the same purpose during the accounting period, it may account for these disclosures as follows:

- For the first disclosure, the information described in the "Contents of Accounting" section will be provided;
- For subsequent disclosures, the frequency or number of disclosures will be provided; and
- For the last disclosure in the accounting period, the date of the disclosure will be provided.

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The County may only utilize this Multiple Disclosures procedure if the disclosure was for one of the following purposes:

- Uses or Disclosures for Public Health Activities (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures About Victims of Abuse, Neglect or Domestic Violence (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses and Disclosures for Health Oversight Activities (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures for Judicial and Administrative Proceedings (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures for Law Enforcement Purposes (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses and Disclosures About Decedents (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses and Disclosures for Cadaveric Organ, Eye or Tissue Donation Purposes (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses and Disclosures for Research Purposes (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses and Disclosures to Avert a Serious Threat to Health or Safety (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses or Disclosures for Military and Veterans Activities (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses and Disclosures for Protective Services of the President and Others (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Uses or Disclosures for Government Programs Providing Public Benefits (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures for Workers' Compensation (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required); and

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- Disclosures to the Secretary of the U.S. Department of Health and Human Services to investigate or determine the County's compliance with 45 Code of Federal Regulations Part 160, subpart C (see Policy HHSa-L-7, Disclosures to the Secretary of the United States Department of Health and Human Services).

5. Requests for Accounting

Requests for accounting of disclosures must be made in writing. The individual or his legal representative will be asked to complete County form "Request for Accounting of Disclosures of Protected Health Information."

6. Response Time

The County shall respond no later than sixty (60) days after the request is received. This deadline may be extended for no more than thirty (30) days by providing the individual with a written statement of the reason for the delay and the date on which the County will complete its action. Any notice that the County will take longer than sixty (60) days to respond must be provided to the individual within sixty (60) days of receiving the request.

7. Special Procedures Where Records are Released for Research Purposes

In cases involving 50 or more records when an IRB or Privacy Board has waived the requirement for the individual's authorization (see Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required), the County may meet the accounting requirement by the individual with the following:

- Name of the study or protocol;
- A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
- A brief description of the PHI that was disclosed;
- The date or period of time during which the disclosures occurred, or may have occurred, including the date of the last disclosure during the accounting period;
- The name, address and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
- A statement that the individual's PHI may or may not have been disclosed for a particular protocol or other research activity.

If the information was made available as provided in this section and the County believes that it is reasonably likely that the individual's PHI was disclosed for the research protocol or activity, the County will assist the individual in contacting the person or entity that sponsored the research and the researcher.

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8. Temporary Suspension of Accounting Rights


The County may temporarily suspend an individual's right to obtain an accounting of disclosures made to a health oversight agency or law enforcement official, if requested by the agency or official. The agency or official must provide a written statement that such an accounting to the individual would be reasonably likely to impede the agency's activity and specify a time period for which the suspension is required. If the agency or official makes the representation orally, the County must:

- Document the statement, including the agency's or official's identity who made the statement;
- Temporarily suspend the individual's right to the accounting of the disclosures subject to the statement; and
- Limit the temporary suspension to no longer than thirty (30) days from the date of the oral statement, unless a written statement as provided for in this section is submitted to the County during that time.

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

SUNSET DATE: This policy will be reviewed for continuance by July 20, 2010.

Approved: _____


Jean M. Shepard, Director
Health and Human Services Agency