

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

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

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHS-L-6**
PAGE: 1 of 7
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 to appropriately provide individuals (patients/residents/clients) or their legal representatives with a Notice of Privacy Practices.

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).

Correctional Institution: Any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

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:

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

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHSa-L-6**
PAGE: 2 of 7
DATE: July 27, 2007

- 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.

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;
- 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: Individuals have the right to receive adequate notice of the uses and disclosures of their PHI that may be made by the County. The County will also inform individuals of their rights and the County's legal duties with respect to PHI through a Notice of Privacy Practices ("notice").

Exception: A Notice of Privacy Practices does not have to be provided to an individual incarcerated in or otherwise confined to a correctional institution. For the County, this includes individuals in the custody of the Sheriff's Department, Juvenile Detention and local police.

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

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHSA-L-6**
PAGE: 3 of 7
DATE: July 27, 2007

PROCEDURES:

1. Contents of the Notice

The County's notice will be in plain language and will include the following elements:

a. *Header*

The notice will contain the following header:

"THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."

b. *Use and Disclosures of PHI*

The notice will contain the following:

- A description and example of the types of uses and disclosures of PHI that the County is permitted to make for treatment, payment, and healthcare operations.
- A description of each of the other purposes (other than treatment, payment, and healthcare operations) for which the County is permitted or required to use or disclose PHI *without* the individual's written authorization.
- A statement that other uses and disclosures of an individual's PHI will be made only with the individual's written authorization, and that the individual may revoke the authorization at any time in writing (except to the extent that the County has taken action in reliance on the authorization).
- A separate statement if the County elects to contact the individual for appointment reminders, to provide information regarding treatment alternatives or other health related benefits or services, or to raise funds for the County that may be of interest to the individual.

c. *Individual rights*

The notice will contain a statement of the individual's rights with respect to PHI and how he or she may exercise the right to:

- Inspect and obtain copies of PHI;
- Request amendments to PHI;
- Receive an accounting of disclosures of PHI;
- Request restrictions on certain uses and disclosures of PHI including a statement that the County is not required to agree to a requested restriction;
- Receive confidential communications of PHI; and
- Obtain a paper copy of the notice upon request (even if the individual has agreed to receive the notice electronically).

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

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHSA-L-6**
PAGE: 4 of 7
DATE: July 27, 2007

d. *County duties*

The notice will explain that, under law, the County must:

- Maintain the privacy of PHI and provide individuals with notice of its legal duties and privacy practices;
- Abide by the terms of the notice currently in effect;
- State in the notice that the County reserves the right to change the terms of its notice and to make the new notice provisions effective for all PHI it maintains; and
- State how the County will provide individuals with a revised notice.

e. *Complaints*

The notice will explain that individuals may file a complaint with the County and/or the Secretary of United States Department of Health and Human Services if they believe their privacy rights have been violated, including a description of how to file a complaint, and a statement that the individual will not be retaliated against for filing a complaint.

f. *Contact information*

The notice will contain the title and telephone number of the County Privacy Officer and identify that person as the contact for further information.

g. *Effective date*

The notice will contain its effective date, which will not be earlier than the date on which the notice was printed or published.

h. *Optional elements*

If the County decides to limit uses or disclosures even more than the law requires, it will explain this in the notice.

i. *Layered Notice*

The County may develop a summary notice that may be used as a face sheet for the more detailed notice.

j. *Font size*

In compliance with California law effective January 1, 2003, all information produced about patients' rights will be printed in at least 12-point font.

2. Providing the Notice

a. *County as a health care provider*

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

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHSa-L-6**
PAGE: 5 of 7
DATE: July 27, 2007

The County will:

- Provide the notice no later than the first date of the first service delivery. If the first service is delivered electronically, the notice will be sent electronically, automatically and contemporaneously. The notice will be provided at the point of registration for health care services.
- Make the notice available for individuals to take with them.
- Post the notice in a clear and prominent location where it is reasonable to expect individuals to be able to read the notice.
- Post the notice prominently on any web site containing information about the County's health care services and make the notice available electronically through the County's internet web site.
- Upon revision, make the revised notice available upon request and post the revised notice.

b. *County as a health plan*

The County will:

- Provide the notice to all new individuals at the time of enrollment in the health plan.
- Notify all individuals then covered by the plan every three years of the availability of the notice and how to obtain the notice.

c. *General provisions applicable to the County as a health care provider and as a health plan*

The County may provide the notice to an individual by email, if the individual agrees to such electronic notice. (If the County knows the email transmission has failed, it will provide a paper copy of the notice.) An individual who receives such an electronic notice retains the right to obtain a paper copy of the notice from the County upon his or her request.

In compliance with the provisions of Title VI of the Civil Rights Act of 1964, the County will distribute the notice to individuals with limited English proficiency in their primary language, or provide interpreter services if the notice is not available in the individual's language.

The notice will be maintained as a separate document and will not be combined with any other document.

3. Obtaining an Acknowledgement of Receipt

Except in the case of an emergency treatment situation, the County will make a good faith effort to obtain written acknowledgment that the individual received the notice. If the individual

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

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHSa-L-6**
PAGE: 6 of 7
DATE: July 27, 2007

refuses to sign the acknowledgment, County staff will document the efforts taken and the reason why the acknowledgment was not obtained.

4. Special Circumstances

There may be situations in which the notice must be provided to someone other than the individual. These situations include, but are not limited to:

Individuals who are permanently incapacitated: If an individual lacks decision-making capacity, the notice will be provided to the individual's legal representative, or if none exists or is reasonably known of, the individual's next of kin. The individual who receives the notice will be asked to sign the acknowledgement of receipt.

Individuals who are temporarily incapacitated or requiring emergency treatment: If an individual temporarily lacks decision-making capacity or there is an emergency treatment situation, the notice of privacy practices will be held, along with other documents for the individual's signature, until the individual regains decision-making capacity and is able to sign the acknowledgement of receipt or within a reasonably practicable time after the emergency treatment situation.

Minors who are unable to consent to treatment on their own behalf: The notice of privacy practices will be provided to the legal guardian or parent who is the minor's personal representative.

Retail pharmacy patients: If the County pharmacy provides medication prescriptions to individuals who have not been registered in the County healthcare system, the notice of privacy practices will be provided to the person who picks up the individual's prescription. A pre-addressed, postage-paid envelop will be included with the notice to obtain the individual's acknowledgement of receipt of the notice and the County pharmacy will document that the notice was provided. *Note:* The notice and acknowledgement form will not be provided to individuals who are incarcerated in correctional institutions.

5. Revisions to the Notice of Privacy Practices

The County will promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, individual's rights, the County's legal duties, or other privacy practices stated in the notice. The County will distribute the notice within sixty (60) days to all individuals then covered by the applicable plan. Except when required by law, a material change to any term of the notice may not be implemented prior to the effective date of the notice in which the material change is reflected.

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

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: **Providing the Notice of Privacy Practices** NO: **HHSA-L-6**
PAGE: 7 of 7
DATE: July 27, 2007

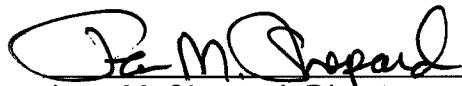
6. Retention of Documentation

A copy of each version of the notice will be retained for six (6) years by the County Privacy Officer. Signed and unsigned acknowledgments will be filed with the individual's medical record and will be retained in accordance with County policies for record retention.

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