

**THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION
HIPAA PRIVACY MANUAL**

Section 4.4: Discretionary Uses and Disclosures Without An Authorization	Page: 1 of 6
Effective Date: September 23, 2003	

POLICY

HIPAA requires Covered Entities to have policies and procedures addressing Uses and Disclosures that are permitted by other laws which are not pre-empted by HIPAA. System shall conduct Uses and Disclosures of PHI that are permitted by law in the absence of an authorization *for routine uses* without specific approval from the Privacy Officer but shall obtain such approval prior to any *non-routine* Use or Disclosure of PHI under this Section with the exception that, in the case of a disclosure by the Office of General Counsel (OGC), a non-routine disclosure made pursuant to subsections 4.4(2)(i), 4.4(2)(ii), 4.4(2)(iii) may be authorized by the OGC attorney with responsibility over the matter, if the attorney determines that the disclosure is permitted by applicable law. This section does not apply to Uses and Disclosures that are required by law, including Uses or Releases required by Court Order. With the exception of Subsections 4.4(1)(a) and 4.4(2)(a)(i), all Uses and Disclosures described in this section are considered to be permitted, as opposed to required, by law.

4.4(1) Routine Uses and Disclosures Exempt from Prior Approval.

Offices that maintain PHI as the Business Associate of a Covered Entity may Use and Disclose PHI routinely as provided by the terms of the Business Associate Agreement in place between the Office and the Covered Entity without seeking prior approval of the Privacy Officer.

In addition, OEB, and in the case of subsection 4.4(1)(e), System may Use or Disclose PHI without an authorization and without seeking prior approval by the Privacy Officer under any of the following circumstances, each of which shall be considered a "routine" Use or Disclosure, subject to the Verification requirements of Section 4.10 and, with the exception of Paragraph (a) of this subsection, the Minimum Necessary requirements of Section 4.9 of this Policy. With the exception of subsection 4.4(1)(e), any office other than OEB must comply with the terms of the Privacy Policies of the Covered Entity on whose behalf it maintains the PHI as a Business Associate. Such a Use or Disclosure does not require prior approval by the Privacy Officer.

- a. Disclosure of an Individual's Own PHI to that Individual or at the written direction of that Individual
- b. Uses or Disclosures for the Purpose of Conducting Payment Operations: OEB may Use or Disclose PHI in order to conduct its Payment operations.

- c. Uses or Disclosure for the Purpose of Conducting Health Care Operations: OEB may Use or Disclose PHI in order to conduct Health Care Operations, provided that OEB's ability to Use or Disclose PHI in connection with underwriting activities is subject to Section 4.5 of this Policy. Health Care Operations include Disease Management as defined by the HIPAA Privacy Rules. Health Care Operations do not including Marketing.
- d. Uses and Disclosures for Health Oversight Activities: OEB may Disclose PHI to a Health Oversight Agency for oversight activities authorized by law (including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system, government benefit programs for which health information is relevant to beneficiary eligibility, entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards, and entities subject to civil rights laws for which health information is necessary for determining compliance), provided that such health oversight activity arises out of, or is directly related to, (i) the receipt of health care; (ii) a claim for public benefits related to health; (iii) qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services; or (iv) a claim for public benefits not related to health, if such activity is conducted in conjunction with an activity described by one of the preceding Clauses (i), (ii), or (iii).
- e. Disclosures for Workers' Compensation: OEB may Disclose PHI as authorized by, and to the extent necessary to, comply with laws relating to workers compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.
- f. Disclosure of Limited Data Sets: System may Disclose a Limited Data Set for the purpose of Health Care Operations, research activities, and public health activities if the recipient has entered into a data use agreement that complies with Section 6.4 of this Manual.
- g. Disclosures for Inspection by the Secretary: Upon the request of the Secretary for access to PHI, and provided that Section 8.1 of this Manual permits the Secretary to obtain such access, System may Disclose PHI to the Secretary.

Notwithstanding the above, a Use or Disclosure of PHI that constitutes an Individual's entire medical record or psychotherapy notes shall not be considered to be made under "routine" circumstances.

4.4(2) Uses and Disclosures of PHI for Third Party Judicial or Administrative Proceedings.

Non-routine disclosure under subsections 4.2(a)(iv) and 4.2(a)(v) require prior approval of the Privacy Officer. In considering whether to approve a non-routine

Disclosure, the Verification requirements of Section 4.10 and the Minimum Necessary requirements of Section 4.9 of this Policy must be met in the absence of an Authorization or a court or administrative order.

a. Disclosures for Third Party Judicial or Administrative Proceedings:

i. Court Orders: System shall disclose PHI in response to an order of a court or administrative tribunal of competent jurisdiction provided that System Discloses only the PHI expressly authorized by such order. When a request is made pursuant to an order from a court or administrative tribunal, System may disclose the information requested without any additional process.

ii. Malpractice Lawsuits or Claims to Which System or The University of Texas System is a Party or Providing Representation. System shall comply with Civil Practice and Remedies Code, Title 4, Liability in Tort, Chapter 74, Medical Liability, as to any action or claim to which it or a University of Texas System institution is a party or is providing representation to a party.

iii. Qualified Protective Order: System may disclose PHI in response to a subpoena, discovery request, or other lawful process regarding a matter to which System or a System institution is not a party, that is not accompanied by an Authorization or order of a court or administrative tribunal and for which System receives a written statement and accompanying documentation demonstrating that: (A) the parties to the dispute giving rise to the request for information have agreed to a qualified protective order (a “qualified protective order” is an order of the court or administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that (I) prohibits the parties from Using or Disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested and (II) requires the PHI, including all copies made, to be returned to System or destroyed at the end of the litigation or proceeding) and have presented the order to the court or administrative tribunal with jurisdiction over the dispute; or (B) the party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.

iv. Written Notice: System may disclose PHI in response to a subpoena; discovery request; or other lawful process that is not accompanied by an Authorization or order of a court or administrative tribunal, if System receives from the party seeking the PHI a written statement and accompanying documentation demonstrating that (A) the party seeking the PHI has made a good faith attempt to provide written notice to the Individual who is the subject of the PHI or, if the subject’s location is unknown, to mail a notice to the subject’s last known address, (B) the notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the subject to raise an objection to the court or administrative tribunal, and (C) the time for the subject to raise objections to

the court or administrative tribunal has elapsed and either (I) no objections were filed or (II) all objections filed by the subject have been resolved by the court or administrative tribunal and the Disclosures being sought are consistent with such resolution;

- v. System's Efforts: System may disclose PHI in response to a subpoena, discovery request, or other lawful process that is not accompanied by an Authorization or order of a court or administrative tribunal, if System makes reasonable efforts to provide written notice to the subject, as described above, or to seek a qualified protective order, as defined above in iii.
- v. All actions taken by System pursuant to this paragraph shall only be taken upon consultation with legal counsel.

4.4(3) Uses and Disclosures of PHI Requiring Prior Approval.

- a. Uses and Disclosures for Public Health Activities: In considering whether to approve a non-routine Use or Disclosure, the Minimum Necessary requirements of Section 4.9 of this Policy must be met in the absence of an Authorization or a court or administrative order.
 - i. Disease Prevention: to a Public Health Authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability (including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions) or, at the direction of a Public Health Authority, an official of a foreign government agency that is acting in collaboration with the Public Health Authority;
 - ii. Reporting Child Abuse or Neglect: to a Public Health Authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
 - iii. FDA Regulation: when System or a University of Texas System institution is subject to the jurisdiction of the Food and Drug Administration ("FDA") with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety, or effectiveness of such FDA-regulated product or activity, including (A) collecting or reporting adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations, (B) tracking FDA-regulated products, (C) enabling product recalls, repairs, replacement, or lookback (including locating and notifying persons who have received products that have been recalled, withdrawn, or are the subject of lookback), and (D) conducting post marketing surveillance; or

- iv. Disease Control: when a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition if System or a Public Health Authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation.
- b. Disclosures for Law Enforcement Purposes: System may Disclose an Individual's PHI to a law enforcement official under any of the following circumstances:
- i. Court Order: In compliance with and as limited by the relevant requirements of a court order, a court-ordered warrant, a subpoena or summons issued by a judicial officer, a grand jury subpoena, or—if (A) the PHI sought is relevant and material to a legitimate law enforcement inquiry, (B) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the PHI is sought, and (C) De-identified Information could not reasonably be used—an administrative request (including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law);
 - ii. Using PHI for Identification or Location: In response to a law enforcement official's request for such PHI for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person;
 - iii. Alerting of Death: For the purpose of alerting law enforcement of the Individual's death, if System suspects that such death resulted from criminal conduct; or
 - iv. Alerting of Criminal Conduct: Due to System's good faith belief that such PHI constitutes evidence of criminal conduct that occurred in connection with benefits obtained through System or The University of Texas System.
- c. Uses and Disclosures Due to Imminent Threat to Health or Safety: System may, consistent with applicable law and standards of ethical conduct, Use or Disclose PHI if System in good faith, including reliance on actual knowledge or on a credible representation by a person with apparent knowledge or authority, believes the Use or Disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and involves PHI, Disclosed to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.
- d. Uses and Disclosures Required by Military Authority: System may Use or Disclose the PHI of Individuals who are Armed Forces personnel, or foreign military personnel, for activities deemed necessary by appropriate military command authorities to assure the proper execution of a military mission, if the

- appropriate military authority has published by notice in the Federal Register (i) the appropriate military command authorities and (ii) the purposes for which the PHI may be Used or Disclosed.
- e. Uses and Disclosures for National Security Activities: System may Disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. § 401 *et seq.*) and implementing authority (e.g., Executive Order 12333).
 - f. Disclosures to Coroners and Medical Examiners: System may Disclose PHI, to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. In connection with such Disclosure, System shall not be required to redact identifying information about persons other than the deceased Individual.
 - g. Disclosures to Funeral Directors: System may Disclose an Individual's PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the Individual after his death, or prior to and in reasonable anticipation of the Individual's death.

REFERENCES/CITATIONS

45 C.F.R. §§ 164.512, 164.514(d)

Fed. Reg. at 82,544-45 (Dec. 28, 2000)