University of California Policy

HIPAA Uses and Disclosures

Responsible Officer: Senior Vice President/Chief Compliance and Audit Officer

Responsible Office: Ethics, Compliance and Audit Services

Effective Date: September 13, 2010

Next Review Date: September 1, 2013

Who is Covered: All UC HIPAA workforce members

Contents

- **Policy Summary**
- **Policy Definitions**
- **Policy Text**
- **Approval Authority**
- **Compliance and Reporting**
- **Implementation Procedures**
- **Related Documents**
- **Frequently Asked Questions**
- **Revision History**

Policy Summary

This policy describes permitted and restricted uses and disclosures of Protected Health Information, using only the minimum information necessary to accomplish the purpose for which it was used/disclosed, describing individual Authorizations for the disclosure of their information, and certain other situations.

Policy Definitions

Refer to the document entitled “UC HIPAA Glossary”.

Policy Text

A. Institutional and Individual Safeguards

Members of the UC Single Health Care Component (SHCC) workforce will use and disclose Protected Health Information (PHI) only as permitted under applicable laws, regulations, and UC systemwide and local policies and must not disclose PHI to workforce members who are not part of the SHCC, except as specifically allowed under the laws, regulations, and policies and, when required, with the individual, member or patient's signed prior Authorization.

Members of the UC workforce who perform duties for both the SHCC and units within UC that are not part of the SHCC may not use PHI for activities or functions outside the SHCC unless otherwise permitted or required by laws, regulations, or policies, or unless such use has been authorized by the individual. Any use without prior authorization is considered a disclosure for purposes of this policy.

Each organizational component of the SHCC must implement a mitigation process to minimize the effect on an individual of any privacy violations regardless of the circumstances of such violation, to comply with laws and regulations regarding the notification of individuals, and to prevent future occurrences. This process will include, when practical, efforts to:

- Contain the damage and stop further use or disclosure;
- Retrain employees to prevent future mistakes or errors;
- Apply discipline or sanctions as required under UC policy;
- Utilize violations as a means to identify systemic problems, and to modify policies or procedures; and
- Inform patients, government agencies and the media, where appropriate, of any improper use or disclosure arising from a violation of the Privacy Rule.

Each member of the SHCC's workforce is responsible for being aware of those types of oral, written, or electronic communications that could result in the unintentional disclosure of PHI to those not permitted to receive PHI, and for applying reasonable safeguards to prevent inappropriate access to or use or disclosure of PHI. Workforce members are responsible for maintaining confidentiality, where reasonably possible, when engaging in activities such as the following:

- Face-to-face or telephone discussion of a patient's condition or lab tests with other health care staff and providers, with the patient or with family members or others involved in the patient's care;
- Discussing a patient's condition during teaching rounds.

There may be situations when SHCC volunteers or contracted individuals have access to PHI incidental to the purpose of their job and limited in nature and for which no business associate relationship exists (e.g., when outside entities take newborn photos or clowns entertain children in the University's Children's Hospitals). To provide reasonable safeguards, the SHCC should:

- Have those outside entities or persons sign a confidentiality agreement; and
- Provide HIPAA training to such volunteers and workforce members.

Each organizational component of the SHCC, in accordance with applicable laws and regulations, must implement policies and procedures that provide for administrative, technical, and physical safeguards to protect PHI in all forms.

It is a violation of this policy for SHCC workforce members to remove the Designated Record Set (DRS) from the care delivery site. Copies of an individual's health information contained in teaching or treatment notes may be removed from the UC worksite only when the workforce member can personally assure him or herself that all Protected Health Information (PHI) is secured from unauthorized access at all times, and that electronic PHI is encrypted on any portable devices, when encryption is deemed a reasonable and appropriate safeguard for the SHCC. If encryption is not deemed reasonable and appropriate for the SHCC environment, then an equivalent alternative measure should be implemented.

B. Prohibition on Direct Or Indirect Payment For PHI
Except as provided in this section below, the SHCC and its Business Associates shall not directly or indirectly receive any payment in exchange for the Protected Health Information of individuals unless the SHCC has received a valid HIPAA Authorization from the individual explicitly authorizing such payment. This prohibition does not apply in the following instances:

- The purpose of the exchange is for public health activities (as described in 45 CFR 164.512(b).
- The purpose of the exchange is for research (as described in 45 CFR 164.501 and 164.512(i)) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
- The purpose of the exchange is for the treatment of the individual, subject to any regulations that prevent protected health information from inappropriate access, use, or disclosure.
- The purpose of the exchange is for the sale, transfer, merger, or consolidation of all or part of the SHCC with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity.
- The purpose of the exchange is for remuneration that is provided by the SHCC to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the SHCC pursuant to a business associate agreement.
- The purpose of the exchange is to provide an individual with a copy of the individual's protected health information.

C. Use of the Minimum Information Necessary to Accomplish a Purpose
Individual organizational components of the SHCC must develop procedures that reasonably limit the use and disclosure of PHI to the minimum necessary standard for payment and health

care operations, as well as for non-covered functions like public health, research, and law enforcement disclosures.

Individual organizational components of the SHCC must develop role-based access controls or policies that limit which members of the workforce may access PHI for treatment, payment, and health care operations, and for other permitted and required activities. These procedures must identify the classes of persons within the SHCC who need access to the PHI (including those who need to access the full medical record or designated record set), the categories or types of PHI needed, and conditions appropriate for such access (e.g., for security access). In the absence of systems that offer substantial control over access, individual organizational components of the SHCC must implement an attestation procedure supported by education of the workforce.

The health care provider team, including doctors, nurses, house staff and other workforce members involved in treatment may use the individual's full medical record without limitation only in the performance of their official duties for treatment purposes.

The minimum necessary standard applies to the SHCC's own use of PHI for health care operations, including clinical teaching of health care professionals. For purposes of achieving and sustaining its academic mission, the SHCC allows the use of the individual's full medical record only when such access is necessary to the teaching program and after individuals engaged in those teaching activities have completed the SHCC's HIPAA training program.

When the SHCC receives requests from outside the SHCC for PHI, the SHCC is responsible to determine that the entity is requesting only the minimum amount of information that is needed, and to disclose only the minimum information necessary.

When a SHCC workforce member requires access to use or disclose PHI beyond their routine job responsibilities, a supervisor or similarly responsible individual must approve the non-routine access, use or disclosure.

D. Authorization Required

The SHCC must obtain a signed Authorization from the patient or their authorized representative for uses and disclosures that are not otherwise permitted by the Privacy Rule or required by law.

SHCC workforce members and organizational component members must use the UC Model HIPAA Authorization Form(s) or substantially equivalent language when evaluating whether to accept a non-UC Authorization Form. The UC Model HIPAA Authorization Form(s) contain(s) all elements required by the Rule and includes the required notifications in plain language.

California law requires the use of a 14-point font for all Authorization Forms, and that the form be translated into languages spoken by 5% or more of the organizational component's service population.

The SHCC must obtain the individual's signature on the Authorization and provide the individual with a copy of the signed Authorization upon their or their authorized representative's

request. When another individual has authority to sign on an individual's behalf, the SHCC must verify and document that person's authority to sign on their behalf. The SHCC must document and retain all signed Authorizations for six years after their expiration, including those provided by a researcher when obtaining PHI for a research study.

The SHCC may combine Authorizations, but may not condition the provision of treatment, payment, enrollment in a health plan or eligibility for benefits upon the patient's agreement to any of the Authorizations. . Authorizations for use or disclosure of psychotherapy notes may be combined only with another Authorization for the use or disclosure of psychotherapy notes. The SHCC may not combine an Authorization with any other document, except that it may be combined with an informed consent agreement for research purposes (see the UC HIPAA Research policy for more information).

The SHCC may not require an individual to provide an Authorization to use or disclose his/her PHI for treatment or payment, except when the treatment is part of a research study that requires the individual's Authorization, or when treatment is solely for the purpose of creating PHI to be disclosed to a third party and the Authorization is required for that disclosure.

A patient may revoke an Authorization for use or disclosure of PHI, and the SHCC will be bound by the revocation from the date it receives the request forward, except to the extent that the SHCC has taken prior action in reliance on the Authorization, or if the Authorization was obtained as a condition of obtaining insurance coverage and other laws give the insurer the right to contest the claim or policy. The revocation has no effect on actions taken prior to the date of the revocation.

The individual must provide a written request for revocation or modification of the Authorization, and revocations or modifications to the Authorization must be executed as quickly as possible (no more than 30 days) of receipt of a written request. The SHCC covered components must implement local procedures to record and communicate all Authorization revocations and to make sure the change is noted in the individual's medical record when appropriate.

E. Authorization Not Required

Treatment, Payment, and Healthcare Operations

The SHCC may *use* PHI for its own treatment, payment, and healthcare operations purposes.

The SHCC may *disclose* PHI for its own and other covered entities' treatment and payment purposes.

The SHCC may *disclose* PHI to another covered entity for the health care operations of the other covered entity within the following limitations:

- Each entity *has* or *had* a relationship with the individual who is the subject of the information;
- The PHI exchanged pertains to that relationship;

- The purpose is for operations that include: quality assessment and improvement activities; population-based activities relating to improving health or reducing health care costs; case management and care coordination; certification; conducting training programs; accreditation; certification; licensing or credentialing activities; health care fraud and abuse detection or compliance. [1]

Facility Directories

So long as the SHCC provides the individual with the Notice of the use of the individual's information in the Facility Directory and provides an opportunity for the individual to restrict such use, the SHCC may include the individual's name, location and general condition (stable, guarded, critical, deceased, etc.) in the Facility Directory. If family members, members of the public, or the media[2] ask for an individual by name, the SHCC may disclose the individual's location and general condition so long as the individual has not restricted those disclosures. The SHCC must honor individuals' requests to restrict disclosures of their information from the Facility Directory.

The SHCC may also provide the individual's name, location within the Facility, and general condition to non-SHCC workforce members of the clergy of the same religious affiliation as the individual, unless the individual objects. Each component of the SHCC will develop procedures to ensure that only bona fide clergy who are not part of the SHCC workforce are provided such information.

In an emergency, the SHCC may disclose the individual's name, location and condition to an immediate family member or to a disaster relief organization so long as the SHCC determines that disclosure is in the individual's best interest, the individual has not previously restricted access nor would do so if given the opportunity, and, as soon as possible, the SHCC will provide the Notice of Privacy Practices to the individual.

In cases where the individual has a personal representative, the SHCC satisfies the Notice distribution requirements by providing the Notice to the personal representative and making a good faith effort to obtain the personal representative's Acknowledgment of Receipt. In the limited cases where the parent is not the personal representative of an un-emancipated minor, such as when the minor is authorized under State law to consent to the treatment and does so, the provider must give a Notice to the minor and make a good faith effort to obtain the minor's acknowledgment of the Notice.

The SHCC is required by law to provide PHI without the individual's Authorization or opportunity to object for the purposes of workplace medical surveillance or to report a work-related illness or injury[3] as long as the SHCC provides written Notice to the individual of this practice. When UC occupational health clinics or other clinics provide these functions on the

[1] However, only for purposes listed in 45 CFR 164.501, paragraphs (1) and (2) of the definition of health care operations in the Privacy Rule.

[2] For example, if the media learned that a named individual had been injured in an accident, the SHCC could respond to a media query regarding that individual's ***general*** condition and location, so long as the media asked for the individual by name.

[3] When the PHI consists of findings related to a work-related injury, illness or medical surveillance, the employer needs the information in order to comply with its obligations under 29 CFR parts 1904-1928, 30 CFR parts 50-90.

worksite, the Notice must be provided when the employee receives care or by posting the Notice in a prominent place where the care is provided.

Family and Friends

In order to disclose PHI to family members or friends of the individual or any other person:

- The individual must identify the family member or friend as involved in his/her care; or
- The PHI must be directly related to the family member or friend's involvement in care; or
- The PHI must be for purposes of notifying individuals responsible for the person's care regarding his/her general condition or death; or
- If the individual is not present, the SHCC must use its best judgment in determining whether the limited disclosure of PHI is in the best interest of the individual; or
- If the family member or friend is present with the individual, and the patient has the capacity to make health care decisions, the SHCC can only use or disclose PHI to the family member or friend:
    - If the patient has had an opportunity to object to the use or disclosure and does not; or
    - If the patient agrees to the use or disclosure; or
    - In the professional judgment of the provider team, the patient would not object.

The Media or External Relations

In determining the newsworthiness of a story pertaining to the SHCC's mission, the media and/or external relations staff may request PHI from physicians and other members of the provider team and use that information in making such a determination. However, in all circumstances, the External or Community Relations Office must limit requests to physicians or others to the minimum necessary to achieve the purpose of the activity.

Note: In order to disclose PHI to an outside media organization, the SHCC must obtain the patient's Authorization in accordance with the *Authorization Required* section of this policy.

Authorization or an Opportunity to Agree or Object is Not Required

All requests for disclosures under this section must be directed to individuals with expertise and authority to determine what is permitted under HIPAA and state law, such as the Office of the General Counsel, local or system HIPAA Privacy Officials, or Health Information Management or Medical Record Services functional offices.

The SHCC may use or disclose PHI to the extent required or permitted by law. In most cases, the Privacy Rule requires the SHCC to obtain and document reasonable assurances that an individual or entity that is requesting PHI is permitted or required by law to receive the PHI. The SHCC may reasonably rely on documentation or statements provided by the requestor, so long as the SHCC receives verification of the individual's authority as required under the Privacy Rule, including representation from a public official, the presentation of official

identification, a written request on official letterhead or a warrant, subpoena, order or other legal process.

Note: The SHCC must be able to provide an accounting of all disclosures (see the UC HIPAA policy on Patients' Rights) made under this section, except when the disclosure is for national security purposes, to correctional institutions, or for law enforcement custodial purposes, or when there is a request for temporary suspension of accounting as described in the Privacy Rule. If the individual has provided an Authorization for the disclosure, no accounting is required.

a) Required By Law: The SHCC may disclose PHI when required to do so by federal, state or local law or regulation.

b) Public Health Activities: The SHCC may disclose PHI for public health activities and purposes, such as reporting of disease, injury, and vital events such as birth and death, required reports to the Food and Drug Administration, and other such purposes as described in the Privacy Rule.

c) Victims of Abuse, Neglect, or Domestic Violence: Under certain circumstances, the SHCC may disclose PHI to appropriate government authorities regarding victims of abuse, neglect or domestic violence.

d) Health Oversight Activities: The SHCC may disclose PHI to governmental agencies for health oversight purposes as authorized or required by law.

e) Judicial and Administrative Proceedings: The SHCC may disclose PHI in the course of judicial or administrative proceedings under certain conditions in response to a court or administrative order, or in response to a subpoena, discovery request, warrant, summons, or other lawful process.

f) Law Enforcement: The SHCC may disclose some PHI under limited circumstances to a law enforcement official for law enforcement purposes, such as to identify or locate a suspect, or to provide information about the victim of a crime.

g) Decedents: The SHCC may use or disclose PHI to coroners, medical examiners, and funeral directors for specific purposes.

h) Cadaveric Organ, Eye, or Tissue Donation: The SHCC may disclose PHI to organ procurement or similar organizations for purposes of performing the transplant.

i) Research: The SHCC may use or disclose PHI for research purposes under limited and specific conditions. Refer to the separate UC HIPAA policy on Research.

j) To Avert a Serious Threat to Health or Safety: The SHCC may disclose PHI when necessary to prevent or lessen a serious threat to an individual's health and safety or the health and safety of the public or another person.

k) Specialized Government Functions:

   i) Military and Veterans Activities: The SHCC may release PHI to military command authorities as authorized or required by law.

ii) National Security and Intelligence Activities: The SHCC may release PHI to authorized federal officials for intelligence, counterintelligence, and other national security activities.

iii) Protective Services for the United States President and Others: The SHCC may disclose PHI to authorized federal and state officials so they may provide protection to the President, other authorized persons, or foreign heads of state, or conduct special investigations, as authorized or required by law.

iv) Correctional Institutions and Other Law Enforcement Custodial Situations: The SHCC may release PHI to the correctional institution or law enforcement official, as authorized or required by law.

l) Workers' Compensation: The SHCC may disclose PHI to workers' compensation entities (e.g., workers' compensation insurers, workers' compensation administrative agencies and employers) without the individual's authorization, provided that a valid workers' compensation claim has been filed, as follows:

- To the extent necessary to comply with laws relating to workers' compensation or similar programs that provide benefits for work-related injuries or illness, including the Black Lung Benefits Act, the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act;

- To the extent the disclosure is required by state or other law, and the disclosure is limited to what the law requires; and

- For purposes of obtaining payment for health care provided to the injured or ill worker.

When PHI regarding an injured worker's previous condition is not directly related to the claims for compensation, the SHCC must obtain the worker's signed Authorization for that disclosure.

An employee's health information maintained by UC in employment records for purposes of complying with workers' compensation laws is not PHI. In such circumstances, the University is not required to comply with the Privacy Rule when using or disclosing health information contained in employment records. However, state or other federal law may apply to the confidentiality of that information.

Approval Authority

Implementation of the Policy: Senior Vice President/Chief Compliance and Audit Officer
Revisions to the Policy: Senior Vice President/Chief Compliance and Audit Officer
Approval of Actions: not applicable

Compliance and Reporting

N/A

Implementation Procedures

UC Organizational Units subject to HIPAA are responsible for implementation.

Related Documents

45 C.F.R. 160.103, 164.501, 164.502, 164.504, 164.506, 164.508, 164.510, 164.512, 164.514, 164.520, 164.522, 164.528, and 164.532

Business & Finance Bulletin IS-2, *Inventory, Classification, and Release of University Electronic Information*

Business & Finance Bulletin IS-3, *Electronic Information Security*

Business and Finance Bulletin RMP-7, *Privacy of and Access to Information Responsibilities*

Business and Finance Bulletin RMP-8, *Legal Requirements on Privacy of and Access to Information Policies*

Frequently Asked Questions

FAQs may be found on the UC HIPAA website.

Revision History

HIPAA Privacy Rule: University of California Systemwide Standards and Implementation Policies (System Standards), April 2003.