

Explanation of Sample HIPAA Privacy Policy Number 4:
Special Exceptions – Disclosures Permitted Without Authorization

In implementing the HIPAA Privacy Rule, the government recognized that unobstructed access to patient information for certain activities is necessary. These types of uses and disclosures represent the majority of the uses and disclosures which must be provided to the patient if the patient requests an “accounting of disclosures”. For this reason, sample policy 4 addresses these special circumstances that allow disclosure without an authorization and the tracking and disclosure that must be done in order to comply with the HIPAA requirements related to the patients’ right to an accounting of disclosures.

Uses and Disclosures Permitted Without Authorization

The following are descriptions of situations in which the HIPAA Privacy Rule permits practices to disclose patient health information without obtaining the patient’s authorization and without giving the patient an opportunity to object:

- **Uses and Disclosures Required by law:** The Privacy Rule would permit the practice to disclose patient information when required by the law to do so.
- **Uses and Disclosures Related to Public Health Activities:** The Privacy Rule allows a practice to disclose patient information for a number of public health activities including the following:
 - **Public Health Reporting-** A practice is allowed to disclose patient information 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 (e.g. the Michigan Department of Community Health).
 - **Child Abuse Reporting-** A practice is allowed to disclose patient information to a government authority that receives child abuse/neglect reports.
 - **Food and Drug Administration Reporting-** A practice is allowed to disclose patient information to the FDA in connection with an adverse event and reporting of product defects and similar activities.
 - **Communicable Disease Reporting-** A practice is allowed to disclose patient information to a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease if the practice is authorized by law to notify the person.
 - **Employer Medical Surveillance and Work-Related Illness or Injury-** A practice is allowed to notify an employer of medical information related to an employee only if the following are met: (a) the practice was providing services at the request of an employer for medical surveillance or to evaluate whether the patient has a work-related injury or illness; (b) the disclosure of patient information is related to the evaluation or the surveillance; (c) the use and disclosure is required for the employer to comply with its legal obligations; and (d) the patient/employee is given notice that the information will be disclosed (notice can be handed to the patient at the time of the evaluation).

- **Uses and Disclosures About Victims of Abuse, Neglect or Domestic Violence:** A practice is permitted to disclose patient information in connection with reports of abuse, neglect or domestic violence for a patient who is not a child without authorization under the following circumstances: (1) Where reports of suspected abuse are required by law; (2) The report is not required by law, but the individual agrees to such disclosure; (3) The report is not required by law but is permitted by law and the practice believes (based upon professional judgment) that disclosure is necessary to prevent serious harm (to the patient or other victims); or (4) The report is not required by law but is permitted by law and the patient is unable to agree because of incapacity, and a law enforcement official represents that the patient information being sought is not going to be used against the patient and enforcement efforts will be materially and adversely affected if the practice waits until the individual can agree.

Under each of these four circumstances, the patient must be notified that the report has been made except where the practice determines, based upon professional judgment, that the notification would place the patient at harm. The practice also does not have to provide notice if the patient is incapacitated and the personal representative who would receive such information on behalf of the patient is the suspected abuser.

- **Health Oversight Activities:** The practice is permitted to disclose patient information to a health oversight agency for activities relating to the oversight of the healthcare system including: (1) audits; (2) civil, administrative or criminal investigations, proceedings, or actions; (3) inspections; (4) licensure or disciplinary action; (5) or other activities.

A practice cannot disclose patient information under this exception if the patient is the subject of the investigation and the investigation is not directly related to the patient's receipt of care or claim for benefits.

- **Judicial and Administrative Proceedings:** The practice is permitted to disclose patient information in the course of any judicial or administrative proceeding in response to a *court order* or *administrative tribunal order*.

The practice must make sure to confirm that the document request is a court order and not simply a subpoena or other court document not signed by a judge which does not have the effect of a court order. Also, the practice is required to limit its disclosure of patient information to the scope of the order. For example, if the order required the practice to provide a copy of one particular date of service, the practice would be in violation of the HIPAA privacy rule by providing additional dates of service not within the scope of the court order.

With regard to discovery requests, subpoenas and other court documents requesting release of patient information, which are not "court orders" (i.e., a document not signed by the judge or having the effect of a court order). Note that although HIPAA provides certain exceptions where a party notifies the patients at issue and gives them the opportunity to object to the disclosure, the case of *Steiner v. Bonnanni*, 292 Mich. App. 265 (2011) states that Michigan law is more stringent than HIPAA and a patient's express consent is required before disclosing information.

- **Law Enforcement Purposes:** The Privacy rule also allows covered entities to disclose patient information for a number of different law enforcement purposes including the following:
 - **Warrants:** In response to a court order, court-ordered warrant, subpoena or summons issued by a judicial officer, grand jury subpoena, civil investigative demand or administrative subpoena, provided that the information sought is relevant to the law enforcement inquiry, specific and limited in scope and de-identified information could not be reasonably used.
 - **Limited Information for Identification Purposes:** In response to a law enforcement official's request for information to identify or locate a suspect/fugitive/material witness/missing person. In such cases, the practice may only disclose:
 - ✓ Name and address
 - ✓ Date and place of birth
 - ✓ Social Security Number
 - ✓ ABO blood type and rh factor
 - ✓ Type of injury
 - ✓ Date and time of treatment
 - ✓ Date and time of death, if applicable
 - ✓ Description of distinguishing physical characteristics (including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos)

Under this exception, a practice cannot disclose patient information related in any way to DNA, dental records, or body fluid/tissue analysis.
 - **Victims of a Crime:** A practice can disclose patient information about a suspected crime victim to law enforcement officials to the extent required by law, and if not required, with the patient's agreement. If the patient's agreement cannot be obtained because of an emergency circumstance or incapacity, disclosure may still be made under the following circumstances: (1) The law enforcement official represents that the information is needed to determine whether the patient was a victim of a crime and the information will not be used against the patient; (2) The law enforcement official represents that law enforcement activity will be materially and adversely affected by waiting for the victim to give consent; and (3) The practice determines that the disclosure will be in the patient's best interests.
 - **Decedents (Suspicion of Criminal Conduct):** A practice is permitted to disclose patient information regarding a patient who has died to a law enforcement official if the practice suspects that the patient's death was the result of criminal conduct.
 - **Crimes on Premises:** A practice is permitted to disclose patient information to a law enforcement official related to a crime reasonably believed to have been conducted on the premises of the practice.
- **Coroners, Medical Examiners, and Funerals:** A practice is permitted to disclose patient information of a deceased patient to a coroner or medical examiner related to identifying the person and determining the cause of death. Information can also be disclosed to a funeral director to the extent that the funeral director needs the

information to provide services to the decedent. If necessary for the funeral director to carry out his/her duties, the practice may disclose patient information, prior to, and in reasonable anticipation of, the patient's death.

- **Organ Procurement:** A practice is permitted to disclose patient information to organ procurement organizations and other entities engaged in procurement, banking, or transplantation.
- **To Avert a Serious Threat to Health or Safety:** The privacy rule allows a practice to use or disclose patient information in cases where the practice believes in good faith that the disclosure is necessary to avert a serious threat to health or safety including: (1) disclosure to a person who can reasonably avert, prevent or lessen the threat (including the target of the threat); or (2) disclosure to law enforcement officials to identify or apprehend an individual who has made statements admitting participation in a violent crime reasonably believed to have caused physical harm to a victim or where it appears that the individual has escaped from a correctional institution or from lawful custody (unless the information regarding the commission of the crime was disclosed as a result of the individual seeking treatment to affect his or her propensity to commit the criminal conduct).
- **Specialized Government Functions:** There are a variety of circumstances involving the government where a practice is permitted by the privacy rule to disclose patient information including:
 - To disclose information regarding Armed Forces personnel to assure proper execution of a military mission;
 - To disclose information for National Security and for the provision of protective services to the President as required by law; and
 - To disclose information regarding an inmate to a correctional institution or law enforcement official having lawful custody of the inmate if the institution or official represents that the information is necessary for provision of health care to the inmate, is necessary for the health and safety of the inmate, other inmates, officials responsible for transporting the inmate, law enforcement officials, or the administration and maintenance of the safety, security and good order of the correctional institution.
- **Worker's Compensation:** A practice is allowed under the privacy rule to disclose patient information in connection with worker's compensation programs as necessary to comply with Workers Compensation laws. Because of the Administrative Rules applicable to Workers Compensation, a practice can provide information based on an attorney signed subpoena for workers compensation – look for this language on the subpoena: *“By requesting this subpoena, the attorney/party certifies that the matter about which this subpoena is issued is pending before the Agency and is issued in compliance with MCL 418.853 and Rule 418.56”*.
- **Immunizations:** A new exception was recently added which allows practices to provide proof of immunization to a school so that a student can be enrolled. This disclosure does not require written authorization, but does require at least a verbal authorization by the student or the student's personal representative (e.g., parent/guardian). The consent should be documented in the medical record or in some other manner to demonstrate that it was received.

Accounting of Disclosures

The Privacy Rule gives patients the right to request and receive an accounting from the practice of certain disclosures made by the practice for up to 6 years prior to the date of the request. In general, Practices *are not required* to provide accounting for disclosures made pursuant to an authorization, or to the patient, the patients personal representative or a friend/family member/other person involved in the patient's care or payment of care as discussed in Policy 3. Disclosures for treatment, payment, and health care operations also do not generally have to be reported in an accounting of disclosures to the patient, although practices with electronic medical records will soon be required to account for such disclosures (regulations are required to be developed pursuant to the HITECH Act, but have not yet been published).

When a patient requests an accounting of disclosures, the practice has sixty (60) days to provide the information. The practice can obtain an extension of up to thirty (30) days by notifying the patient in writing of the reason for delay and the estimated completion date.

When required to make an accounting of disclosures the practice's accounting must consist of the following information for each disclosure:

- ✓ Date of the disclosure;
- ✓ Name of entity or person who received the information and address if known;
- ✓ Brief description of the protected health information disclosed; and
- ✓ Brief statement of the purpose of the disclosure.