
**University of Wisconsin-Madison
Policy and Procedure**

Policy Number: 3.3
Policy Title: Uses and Disclosures of Protected Health Information Not
Requiring Patient Authorization or an Opportunity to Agree or to
Object
Effective Date: April 14, 2003
Last Revision Date: Jun 13, 2014
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I. Policy

The HIPAA Privacy Rule does not require that patients provide written or verbal authorization prior to some uses or disclosures of their protected health information. UW-Madison follows HIPAA regulations regarding when patient authorization, written or verbal, is not required prior to certain uses or disclosures of their protected health information.

II. Definitions

- A. **Disclosure:** The sharing of PHI by an individual within the UW HCC or UW ACE with a person or entity outside the UW HCC or UW ACE.
- B. **Health Care Operations:** Any of a number of business and administrative activities, including
- Conducting quality assessment and improvement activities
 - Reviewing the competence or qualifications of health care professionals
 - Conducting training programs.
 - Accreditation
 - Credentialing
 - Conducting or arranging for medical review, legal services and auditing functions
 - Business planning and development
 - Business management and general administrative activities

Health care operations do not include research and many fundraising and marketing activities. See Privacy Policies # 3.6 “Uses and Disclosures of Protected Health Information for Marketing” and # 3.7 “Uses and Disclosures of Protected Health Information for Fundraising” for more information.

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- C. Payment: The activities undertaken by a health care provider to obtain payment for the provision of care or by a health plan to provide reimbursement for the provision of care.
- D. Protected Health Information (“PHI”): Health information, or healthcare payment information, including demographic information, which identifies the individual or can be used to identify the individual. PHI does not include student records held by educational institutions or employment records held by employers.
- E. Treatment: The provision, coordination, or management of health care and related services.
- F. University of Wisconsin Affiliated Covered Entity (“UW ACE”): The UW-Madison Health Care Component (except University Health Services and the State Laboratory of Hygiene), the University of Wisconsin Medical Foundation and the University of Wisconsin Hospital and Clinics. See Privacy Policy # 1.2 “Designation of UW Affiliated Covered Entity”.
- G. Use: The sharing, employment, application, utilization, examination, or analysis of PHI by an individual within the UW HCC or the UW ACE.
- H. UW-Madison Health Care Component (“UW HCC”): Those units of the University of Wisconsin-Madison that have been designated by the University as part of its health care component under HIPAA. See Privacy Policy # 1.1 “Designation of UW-Madison Health Care Component” for a listing of these units.

III. Procedures

Note that special rules apply to records or information concerning HIV status, substance abuse treatment and mental health. Unless otherwise specified, the information below applies to general treatment records and information (i.e. excludes HIV status, substance abuse treatment and mental health). Contact the HIPAA Privacy Officer or the UW Office of Legal Affairs for more information.

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Under the HIPAA Privacy Rule, the following uses and disclosures do not require obtaining patient authorization or providing the patient with an opportunity to agree or object to the use or disclosure:

A. Use for Treatment, Payment, or Health Care Operations.

Use of PHI for treatment, payment, or health care operations (as defined above), within the UW HCC or the UW ACE, does not require patient authorization or providing the patient an opportunity to agree or to object.

Except for uses for treatment, these uses are subject to the minimum necessary standard (see Privacy Policy #3.8 “Minimum Necessary Standard”).

B. Disclosure for Treatment, Payment, and Health Care Operations

1. PHI concerning HIV test results and substance abuse treatment does require written patient authorization for disclosure or release.
2. PHI may be disclosed without patient authorization or providing an opportunity to agree or to object in the following situations:
 - a. PHI may be disclosed by an individual within the UW HCC or UW ACE for its own treatment activities. In addition, PHI may be disclosed to another health care provider for its treatment activities.
 - b. PHI may be disclosed by an individual within the UW HCC or UW ACE for its own payment activities. In addition, PHI may be disclosed to another covered entity (e.g., health care provider or health plan) for that entity’s payment activities.

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- c. PHI may be disclosed by an individual within the UW HCC or UW ACE for certain health care operations of another health care provider or health plan, if the other provider or health plan also has a relationship with the patient who is the subject of the PHI. Health care operations include teaching/training, conducting quality assessment and improvement activities and reviewing the competence or qualifications of health care professionals.
 3. It is not required that disclosures for treatment, payment, and health care operations be included in the accounting of disclosures (see Privacy Policy # 7.1 “Requests by Patients for an Accounting of Certain Disclosures”).
 4. The minimum necessary standard does not apply to disclosures for treatment purposes to other health care providers, but does apply to the other disclosures listed in this section “B” (see Privacy Policy # 3.8 “Minimum Necessary Standard”).
- C. Other Uses and Disclosures That Do Not Require Patient Authorization or Patient Opportunity to Agree or Object
 1. Uses and Disclosures Required by Law
(Note: the minimum necessary standard does not apply to uses and disclosures required by law.)
 - a. In response to a court order (may disclose only the PHI expressly authorized by such order, and may include HIV status, substance abuse treatment or mental health).
 - b. In response to a written request by a federal or state agency to perform a legally authorized function, such as management audits, financial audits, program monitoring and evaluation, and investigation of patient complaints.

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- c. In response to a request by a county agency or other investigating agency for investigation of elder abuse or by a county protective services agency for investigation of suspected abuse of a vulnerable adult.
- d. In response to a request by the designated protection and advocacy agency for the purpose of protecting and advocating the rights of a person with developmental disability or mental illness.
- e. To a county department, a sheriff or police department or a district attorney for purposes reporting suspected child abuse.
- f. In response to a request by a county department, a sheriff or police department or a district attorney for purposes investigating suspected child abuse/neglect or for purposes of prosecution of alleged child abuse/neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name.
- g. To school district employee or agent, if the employee or agent has responsibility for preparation or storage of patient health care records or if access to the patient health care records is a requirement of state or federal law.
- h. To the Department of Health Services or to a sheriff, police department or district attorney for investigation of death of patients related to the uses of physical restraints or psychotropic medications or suicides.
- i. To a coroner, deputy coroner, medical examiner, or medical examiner assistant for purposes of completing a death certificate.

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- j. To a funeral director for medical certification of cause of death on death certificate.
- k. To a coroner, deputy coroner, medical examiner or medical examiner assistant for purposes of reporting and investigating deaths which are unexplained, unusual or suspicious, homicides, suicides, deaths following an abortion, deaths due to poisoning, and deaths following accidents.
- l. To the appropriate organ procurement organization, disclosure may be made regarding patient deaths.
- m. To the police department or county sheriff's office, disclosure must be made regarding gunshot wounds, any wound if there is reasonable cause to believe that wound occurred as the result of a crime, and burns if there is reasonable cause to believe that the burn occurred as a result of a crime.
- n. To the local health officer or to the Department of Health Services, disclosure may be made regarding:
 - i. Communicable disease cases and deaths (including all reportable conditions listed in Chapter HFS 145, Appendix A);
 - ii. Sexually transmitted disease cases;
 - iii. Sexually transmitted disease cases in which there has been cessation or refusal of treatment.
- o. To the state epidemiologist, disclosure may be made regarding positive HIV test results and persons significantly exposed.
- p. To the Wisconsin Department of Health Services, disclosure may be made regarding:

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- i. Birth defects;
 - ii. Lead poisoning cases;
 - iii. Induced abortions;
 - iv. Cancer and precancerous cases;
 - v. Deaths of patient admitted to any facility or unit providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons for which there is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication or that the death was a suicide; and
 - vi. Caregiver misconduct.
- q. To the U.S. Food and Drug Administration, disclosure may be made regarding adverse device and drug events.
- r. To a Worker's Compensation carrier for a person who has filed a Worker's Compensation claim;
2. Uses and Disclosures Permitted by Law
(Note: the minimum necessary standard applies to the following uses and disclosures.)
- a. To the Wisconsin Department of Transportation, disclosure may be made regarding impaired drivers (report must be made by a physician).
 - b. To law enforcement officials (or another person reasonably able to prevent or lessen the threat), disclosure may be made regarding serious or imminent threats to the health or safety of a person or the public.
 - c. To researchers if the IRB has granted a waiver of authorization.

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- d. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, or the receiving institution intake staff at a prison or jail to which a prisoner is being transferred.
3. The disclosures of PHI in the categories listed above in 1. and 2., including verbal disclosures, must be included in an accounting of disclosures, if requested by a patient (see Privacy Policy # 7.1 "Requests by Patients for an Accounting of Certain Disclosures").
4. Contact the UW-Madison Privacy Officer with questions about the need for patient authorization for other types of disclosures.

IV. Documentation Requirements

Each unit in the UW HCC must have procedures for tracking and documenting disclosures that 1) do not require patient authorization and 2) are required to be included in the accounting of disclosures. See Privacy Policy #7.1 "Requests by Patients for an Accounting of Certain Disclosures" for additional details.

V. Forms

None.

VI. References

- 45 CFR 164.502 (HIPAA Privacy Rule)
- 45 CFR 164.506 (HIPAA Privacy Rule)
- 45 CFR 164.512 (HIPAA Privacy Rule)
- 45 CFR 164.528 (HIPAA Privacy Rule)

VII. Related Policies

- Policy Number 3.2 "Uses and Disclosures of Protected Health Information That Require Patient Authorization"

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- Policy Number 3.4 “Uses and Disclosures of Protected Health Information That Require Providing the Patient with an Opportunity to Agree or to Object”
- Policy Number 3.6 “Uses and Disclosures of Protected Health Information for Marketing”
- Policy Number 3.7 “Uses and Disclosures of Protected Health Information for Fundraising”
- Policy Number 3.8 “Minimum Necessary Standard”
- Policy Number 3.9 “Verifying Identity and Authority of Outsiders Seeking Disclosure of a Patient’s Protected Health Information”
- Policy Number 7.1 “Requests by Patients for an Accounting of Certain Disclosures”

VIII. For Further Information

For further information concerning this policy, please contact the UW-Madison HIPAA Privacy Officer or the appropriate unit HIPAA Privacy Coordinator or sub-Coordinator. Contact information is available within the “Contact Us” tab at hipaa.wisc.edu.

Reviewed By

Chancellor
Chancellor’s Task Force on HIPAA Privacy
UW-Madison HIPAA Privacy Officer
UW-Madison Office of Legal Affairs

Approved By

Interim HIPAA Privacy and Security Operations Committee