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

Policy Number: 3.4  
Policy Title: Uses and Disclosures of Protected Health Information that Require Providing the Patient with an Opportunity to Agree or to Object  
Effective Date: April 14, 2003  
Last Revision Date: June 12, 2014  
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**I. Policy**

The HIPAA Privacy Rule requires that patients be provided with an opportunity to agree or object to certain uses or disclosures of their protected health information and, if the patient objects, the use or disclosure may not be made. UW-Madison follows HIPAA regulations regarding when patients must be provided with an opportunity to agree or object 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. **Protected Health Information (“PHI”):** Health information or health care payment information, including demographic information collected from an individual, 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.
- C. **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”.
- D. **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**

Under HIPAA, several types of uses and/or disclosures require that the patient be given the opportunity to agree or to object in advance of the use or disclosure and,

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if the patient objects, the use or disclosure may not be made. UW staff may orally inform the patient of the intended use or disclosure and obtain the patient's oral agreement or objection, as follows:

- A. Disclosures of PHI to Those Involved in the Care of the Patient and For Notification Purposes
  - 1. UW HCC staff may disclose a patient's PHI to:
    - a. A family member, other relative, or a close personal friend of the patient or any other person identified by the patient, the PHI directly relevant to such person's involvement with the patient's care or payment related to the patient's health care.
    - b. Notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the patient, or another person responsible for the care of the patient of the patient's location, general condition, or death.
  - 2. The disclosure described above may be made only in accordance with the following procedures:
    - a. If the patient is present for, or otherwise available prior to, such disclosure and has the capacity to make health care decisions, UW HCC staff may disclose the PHI if they:
      - i. Obtain the patient's agreement;
      - ii. Provide the patient with the opportunity to object to the disclosure and the individual does not express an objection; or
      - iii. Reasonably infer from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

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It is expected that in most circumstances, UW HCC staff will be able to disclose PHI to those involved in the care of the patient and/or for notification purposes based on options ii or iii above. For example, if the patient allows a family member or friend to be present during treatment, it is reasonable to infer that the patient would not object to disclosures of most types of PHI to the family member or friend.

However, if UW HCC staff is aware of circumstances (e.g., “sensitive” diagnoses, dysfunctional family dynamics, etc.) that might result in the patient objecting to such disclosure, staff should obtain the patient’s agreement and document such agreement in the medical record before proceeding with the disclosure.

- b. If the patient is not present, or the opportunity to agree or object to the disclosure cannot practicably be provided because of the patient’s incapacity or an emergency circumstance, UW HCC staff, in the exercise of professional judgment, may determine whether the disclosure is in the best interests of the patient. If so, UW HCC staff may disclose only the PHI that is directly relevant to the person’s involvement with the individual’s health care. Unless circumstances dictate otherwise, it is generally in the patient’s best interest to disclose relevant PHI to those present, accompanying the patient, or otherwise involved in the patient’s care.

**B. Use and Disclosure of PHI for Notification in Disaster Relief Situations**

UW HCC staff may use or disclose PHI to a public or private organization authorized by law or its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities for the notification of, or to assist in the notification of (including identifying or locating), a family member, a personal representative of the patient, or another person

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responsible for the care of the patient of the patient's location, general condition, or death, as follows:

1. If the patient is present for, or otherwise available prior to, such use or disclosure and has the capacity to make health care decisions, UW HCC staff may use or disclose the PHI as described above if they:
  - a. Obtain the patient's agreement;
  - b. Provide the patient with the opportunity to object to the use or disclosure and the individual does not express an objection; or
  - c. Reasonably infer from the circumstances, based on the exercise of professional judgment, that the patient does not object to the use or disclosure.

It is expected that in most circumstances, when the patient is present, UW HCC staff will be able to disclose PHI to disaster relief agencies for notification purposes, based on options b or c above.

However, if UW HCC staff is aware of circumstances that might result in the patient objecting to such disclosure, staff should obtain the patient's agreement and document such agreement in the medical record before proceeding with the disclosure.

2. If the patient is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the patient's incapacity or an emergency circumstance, UW HCC staff, in the exercise of professional judgment, may determine whether the use or disclosure is in the best interests of the patient. If so, UW HCC staff may disclose only the PHI that is directly relevant to the person's involvement with the patient's health care. Unless circumstances suggest otherwise, it is generally in the patient's best interest to disclose relevant PHI for notification purposes to disaster relief agencies.

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C. Minimum Necessary Standard

The minimum necessary standard applies to disclosures made under this policy. See Policy # 3.7 “Minimum Necessary Standard”.

D. Accounting

Disclosures made under this policy are not required to be included in the accounting of disclosures to the patient.

**IV. Documentation Requirements**

UW HCC staff should document, by a note in the patient record, instances where the provider receives a clearly stated agreement or refusal to share information with individuals referred to in this section.

**V. Forms**

None.

**VI. References**

45 CFR 164.510 (HIPAA Privacy Rule)

**VII. Related Policies**

- Policy Number 3.2 “Uses and Disclosures of Protected Health Information That Require Patient Authorization”
- Policy Number 3.3 “Uses and Disclosures of Protected Health Information Not Requiring Patient Authorization”
- 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”

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- 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](http://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