

UC Riverside, School of Medicine Policies and Procedures
Policy Title: Access, Use and Disclosure of PHI
Policy Number: 950-02-009

Responsible Officer:	Compliance Officer
Responsible Office:	Compliance Office
Origination Date:	06/2013
Date of Revision:	03/2016
Scope:	UCR School of Medicine and UCR Health Practice Locations

I. Policy Summary

The Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), of the Health Information Portability and Accountability Act (HIPAA) provides federal protection for the privacy of health information. The Confidentiality of Medical Information Act (CMIA), state law in California, also provides patient privacy protection. Federal HIPAA regulations require providers to conform to whichever federal or state law provides patients with greater protection or provides the patient with more rights over their information.

The decision as to whether PHI can be used or disclosed relies on the purpose for the use and disclosure. This is a summary policy that provides guidelines for when and how PHI can be used and disclosed, and provides direction on uses and disclosures of protected Health Information that:

1. Are permitted by law but do not require patient authorization for use or disclosure
2. Are required by law
3. Must be authorized by the patient or the patient's representative

II. Definitions:

Refer to Standard Definition Guide Document.

III. Policy:

PHI will not be used or disclosed except as permitted or required by law. Whenever required by the Privacy Rule, reasonable efforts will be made to limit the use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. PHI must be reasonably safeguarded: (i) from any intentional or unintentional use or disclosure that violates HIPAA policies, and (ii) to limit incidental uses or disclosures.

All patients must be given the UCR Health Notice of Privacy Practices, and UCR Health must make good faith effort to obtain the individual's signed acknowledgement that they received the Notice. The signed acknowledgement will be scanned into the patient's medical record.

- Access, use and disclosure is permitted for purposes of treatment, payment and healthcare operations without patient authorization when a Notice of Privacy Practice has been given to the patient.
- Use and disclosure for payment and healthcare operations is limited to the minimum necessary for the purpose of the use or disclosure.
- Some disclosures are mandated or required under federal and state law. The amount of patient information disclosed must be limited to the amount required by law.
- Staff must consult with, and have approval from, the Compliance and Privacy Officer before releasing information to outside entities when there is no written patient authorization or for purposes other than treatment, payment and healthcare operations.
- All other accesses, uses and disclosures require the patient's written authorization. Some disclosures have specific requirements for the patient's authorization. Please refer to the UCR Health Policy "*Authorization for Disclosure of Protected Health Information (PHI)*" for the requirements of a valid authorization form.
- It is the responsibility of each employee, medical staff member, to know and to understand the requirements for accessing, using and disclosing PHI.

A. Permitted Uses and Disclosures

The following are permitted uses and disclosures of PHI that do not require the patient's authorization. These uses are required to be listed in the Notice of Privacy Practices.

UCR Health may use and disclose PHI, without an individual's authorization, for the following purposes:

1. Treatment, payment, and health care operations within the UCR Healthcare system;
2. Public Health surveillance, investigation and intervention activities;
3. In emergency situations when the individual is incapacitated and does not have the ability to either agree or object to the disclosure.
4. In the form of a Limited Data Set, for the purposes of research, public health, or health care operations.
5. To the Secretary of the Department of Health and Human Services when undertaking a compliance investigation or review or enforcement action, without limitation.
6. For contractors who provide services to UCR health under the guidelines of a Business Associates Agreement (BAA).
7. For certain treatment purposes to any healthcare provider covered by the

- Privacy Rule including those outside of the University of California system.
8. To another covered entity or a healthcare provider for the payment activities of the entity or the provider that receives the PHI.
 9. To another covered entity for certain healthcare operations of the entity that receives the information when:
 - i. Each entity has or had a relationship with the individual who is the subject of the information and the information pertains to the relationship; and
 - ii. The disclosure is for those health care operations activities 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-related health care operations, teaching activities or for purpose of health care fraud and abuse detection or compliance.
 10. For psychotherapy treatment by the originator of the psychotherapy notes.
 11. For certain functions related to government or public health activities.

B. Disclosures Required by Law

The following are examples of required disclosures of protected health information that do not require patient authorization, but are required or mandatory under either state or federal law.

The amount of information disclosed is limited to that information that is specifically required by law to be disclosed.

Please refer to the UCR Health Policy "*Mandatory Disclosure of PHI*" for more details on these disclosures. Examples of required disclosures include:

- Public Health reporting
- FDA reporting
- Assault and abuse
- Disclosure to Organ Procurement agencies
- Licensing and Accreditation
- Healthcare oversight-Government benefit programs
- Peer review purposes
- National security and Intelligence activities
- Disclosure for military purposes
- Disaster relief disclosures
- Workers compensation
- Requests related to decedents
- Other disclosures required by law

C. Disclosures Requiring Patient Authorization

For all other disclosures that are not permitted or required under the Privacy Rule, the uses and disclosures of protected health information, a written and specific authorization signed by the patient or the patient's legal representative is required.

Please refer to the UCR Health Policy "*Authorizations for Disclosure of Protected Health Information*" for the requirements of a valid Authorization or Release of Information form.

In all cases when a workforce member is not certain whether the access or use is permitted, or whether an Authorization is required for disclosures of PHI, he/she must consult with the Compliance and Privacy Officer prior to using or disclosing that information or requesting that the patient sign an Authorization.

As a general rule, any requests for release of protected health information should be referred to the Compliance and Privacy Officer.

The following types of disclosures require patient authorization:

1. Any PHI provided to a third party for which there is no permitted or required purpose for the disclosure
2. Psychotherapy notes
3. For marketing communications for which UCR receives direct or indirect payment
4. Institutional Review Board (IRB) approved research protocol that requires informed consent and the patient's authorization for release of PHI for research
5. Disclosure to the patient's employer (including those situations when the patient is a UC employee and the disclosure is to UC) except;
 - a. When the use and disclosure is for public health activities
 - b. To conduct an evaluation relating to medical surveillance of the workplace; or
 - c. To evaluate whether the individual has a work-related illness or injury
6. Creating a list of patients for fundraising activities using disease or treatment information that clearly identifies the patient and his/her specific disease or treatment
7. Use and disclosure of PHI to the media or through other forms of external communications
8. Creation of disease or treatment-specific databases (that are not de-identified or limited data sets)
9. To another covered entity for purposes of resolution of internal grievances, customer service, and medical review or auditing activities

In all circumstances in which an authorization is required, disclosure of the

following must specifically be authorized by the patient: HIV/AIDS test results, psychiatric information, genetic test results and alcohol/drug treatment information.

D. Disclosures to Family

If the patient is present and has the capacity to make healthcare decisions, information may be provided to the present family member(s), friends or others involved in the patient's care if:

1. The patient agrees to the disclosure of the information; or
2. The patient has an opportunity to object and does not object

When the patient is not present or is verbally unable to consent, no information will be provided to family members unless the patient has provided written authorization, Advanced Directive, medical power of attorney, or there is a documentation in the medical record identifying that the family member is involved in the care of the patient or the family member is designated as the emergency contact.

Disclosures regarding particularly confidential information such as HIV status, mental health information or other sensitive information should only be made to family members with the patient's explicit authorization.

The physician or healthcare provider may use professional judgment and experience to decide if it is in the patient's best interest to allow someone to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of health information for the patient.

E. Disclosures under Subpoena

Subpoenas, Court Orders and other Legal Requests

The disclosure of Protected Health Information (PHI) in response to a subpoena or court order varies depending on the type of subpoena and the court or legal authority who issued the subpoena. Please contact the Compliance and Privacy Officer and Campus Counsel regarding disclosures that must be made in response to a subpoena.

F. Disclosures of Deceased Patients' PHI

The HIPAA Privacy Rule protects the individually identifiable health information about a decedent for 50 years following the date of death of the individual. During the 50-year period of protection, the personal representative or beneficiary of the decedent has the ability to exercise the rights under the Privacy Rule with regard to the decedent's health information, such as authorizing certain uses and disclosures of, and gaining access to, the information. With respect to family members or other persons involved in the individual's health care or payment for care prior to the

individual's death, but who are not personal representatives, the Privacy Rule permits a covered entity to disclose the relevant protected health information of the decedent to such persons, unless doing so is inconsistent with any prior expressed preference of the deceased individual that is known to the covered entity. This may include disclosures to spouses, parents, children, domestic partners, other relatives, or friends of the decedent, provided the information disclosed is limited to that which is relevant to the person's involvement in the decedent's care or payment for care.

IV. Responsibilities: N/A

V. Procedures:

A. Verification Procedures

1. Prior to disclosing any information, UCR Health staff must verify the identity of the person requesting the protected health information and the authority of such person to have access to the PHI, if the identity or authority of the person is not already known. Valid forms of identification include:
 - California Driver's License
 - Driver's license from another state or other country provided the license contains a photograph or information such as name, date of birth, gender, height, eye color and address;
 - State identification card with picture;
 - Public, government or private employment identification card;
 - Social Security card (original) with photo ID;
 - Passport: U.S. (expired or unexpired) or unexpired foreign passport;
 - U.S. Citizen Card (Form 1-197);
 - Permanent resident card or Alien Registration receipt card (Form 1-155);
 - School ID card with a photograph (current);

In the absence of a photo ID document, other identification verification can include information to verify identity: medical record number, date of birth, SSN number, mother's maiden name; home address, telephone number, name of guarantor, name of emergency contact; the name of the primary care physician.

2. Obtain from the person requesting the PHI any documentation, statement or representations that are a condition of the disclosure (e.g. an administrative subpoena or summons).
3. Where disclosure is to a public official or someone acting on behalf of the public official, the following are acceptable means of verification of authority:
 - A written statement of the legal authority for the request (or, if impracticable, an oral statement).

- A warrant, subpoena, order or other legal process issued by a grand jury or judicial or administrative tribunal.
4. Where disclosure is to a public official or someone acting on behalf of the public official, the following are acceptable means of verification of identification:
 - An agency identification badge or other official credentials or proof of government status (if request is in person).
 - A written statement on government letterhead that the person is acting under the government's authority.
 - Other evidence or documentation of agency that establishes that the person is acting on behalf of the public official.
 5. Where the disclosure for a diseased patients' PHI:
 - Proof that the patient is deceased.
 - Proof that the requestor is the beneficiary of personal representative of the deceased. This proof may include a will or a document from a court.

B. Disclosure Procedures

1. Receive the request for disclosure of PHI.
2. Verify whether the disclosure is permitted or required, or whether patient authorization is needed in order to release the information.
3. If the disclosure can be made, request documentation from the requester to verify the identity and authority that the individual or entity requesting the information is permitted or required by law to receive the PHI.
4. Follow normal procedure for processing request but include a cover letter with the information being released to serve as a reminder to the recipient that the PHI is of a sensitive nature and must be returned or destroyed when no longer needed.
5. Document the disclosure in the medical record.
6. For disclosures requiring written patient authorization, please refer to UCR Health Policy "*HIPAA. Authorization for Disclosure of Protected Health Information.*"

VI. Forms/Instructions: N/A

VII. Related Information

Federal Register 45 CFR, Part 164
California Medical Information Act Civil Code §56

Related UCR Health Policies:

Authorization for Disclosures of PHI
Mandatory Disclosures of PHI

VIII. Revision History: 3/2016

Approval(s):

Compliance Committee (04/26/2016)