

HIPAAClickandComply.com Sample Privacy Policies and Procedures

1. Uses and Disclosures of Protected Health Information

PURPOSE

This policy explains the process for using or disclosing Protected Health Information (PHI).

POLICY

- 1.1. Acme Health Care will recognize that PHI cannot be used or disclosed except as described in Acme Health Care's policies and procedures.
§164.502
- 1.2. Acme Health Care will recognize that uses and disclosures can be made to carryout treatment, payment, or health care operations (TPO).
§164.506
- 1.3. Acme Health Care will recognize that certain uses and disclosures may require patient authorization.
§164.508
- 1.4. Acme Health Care will recognize that certain uses and disclosures may require an opportunity for the patient to agree or to object.
§164.510
- 1.5. Acme Health Care will recognize that certain uses and disclosures do not require patient authorization, or an opportunity for the patient to agree or to object.
§164.512
§164.514(f) and (g)

PROCEDURES

Reporting on Crimes, Criminals, Victims and Inmates

Sample

Averting Threats

§164.512(j)(1)(i)

HIPAA allows, and other laws may require, Acme Health Care to disclose PHI necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Such disclosures should be made to person(s) who are reasonably able to prevent or lessen the threat, which can include the person who is the target of the threat. Acme Health Care will have acted in good faith if the disclosure is based upon Acme Health Care's direct knowledge or Acme Health Care's reliance on a credible account by a person with apparent knowledge or authority. Authorization or the opportunity for the patient to agree or deny is not required. Disclose the minimum PHI necessary for this purpose. Furthermore, make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Escaped Inmates

§164.512(j)(ii)(B)

HIPAA allows, and other laws may require, Acme Health Care to disclose PHI about a person who appears to be an escapee from a correctional institution or from lawful custody. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Acme Health Care will be presumed to have acted in good faith if the disclosure is based upon Acme Health Care's direct knowledge or Acme Health Care's reliance on a credible account by a person with apparent knowledge or authority. Authorization or the opportunity for the patient to agree or deny is not required. Disclose the minimum PHI necessary for this purpose. Furthermore, make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Reporting Violent Criminals

§164.512(j)(ii)(A)

Acme Health Care can disclose PHI to law enforcement authorities to help them identify or apprehend an individual who admitted to participating in a violent crime in which someone was seriously hurt. However, do not make such a disclosure if the statement occurred during treatment, counseling, or therapy (or request for such services) for the type of behavior that led to such a crime. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Acme Health Care can disclose only the following information concerning patients who make

statements about participating in violent crimes:

- The statement (admitting participation in a violent crime);
- 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 (beard or moustache), scars, and tattoos.

Sample

Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that. Acme Health Care will be presumed to have acted in good faith if the disclosure is based upon Acme Health Care's direct knowledge or Acme Health Care reliance on a credible account by a person with apparent knowledge or authority. Authorization or the opportunity for the patient to agree or deny is not required.

Law Enforcement Disclosures

§164.512(f)(1)(i)

PHI may be disclosed to law enforcement officers as required by law. For example, some laws require that you report wounds or other physical injuries to local law enforcement. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the *Disclosure of PHI for Law Enforcement* form. If the disclosure results from a request, rather than Acme Health Care volunteering the information, ask whomever is requesting the information to cite the law. If you are unfamiliar with the stated law, check to make sure it indeed requires disclosure by Acme Health Care. You are not required to obtain patient authorization or to provide the patient with an opportunity to agree or object. Disclose the minimum necessary PHI for this purpose. Furthermore, make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Legal Orders

§164.512(f)(1)(ii)

PHI may be disclosed in compliance with, and as limited by a court order, a court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; an administrative request, including an administrative subpoena or summons; a civil or an authorized investigative demand; or similar process authorized under law. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Before making a disclosure, obtain a copy

of whichever above-mentioned document applies. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

If the request for PHI is based upon an administrative request such as an administrative subpoena or summons, or a civil or investigative demand, the information sought must be:

- Relevant and material to a legitimate law enforcement inquiry; and
- Specific and limited to what is reasonably needed for the purpose for which the information is sought; and
- De-identified information could not reasonably be used.

You are not required to obtain patient authorization or to provide the patient with an opportunity to agree or object. Disclose the minimum necessary PHI for this purpose using the legal order as a guide. If the requestor seeks information that is inconsistent with what is listed in the order, or appears inconsistent with a reasonable interpretation of what the order calls for (when the information is not listed), get legal assistance to determine the minimum necessary required by the order.

Identifying or Locating a Person

§164.512(f)(2)

PHI may be disclosed to a law enforcement official when he or she makes a request to help identify or locate a suspect, fugitive, material witness, or missing person. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Under the circumstances mentioned above, only the following PHI may be disclosed:

- 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;
- A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

Unless required by law, you may not disclose any PHI related to the individual's DNA or DNA analysis, dental records, typing samples, or analysis of body fluids or tissue.

You are not required to obtain patient authorization or to provide the patient with an opportunity to agree or object. Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification*

Requirements section of these Policies and Procedures about how to do that.

Victims of Crime

§164.512(f)(3)

PHI may be disclosed to a law enforcement official making a request for information about a patient who is, or is thought to be, a victim of a crime. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. The patient must either provide consent, or be unable to provide consent because of incapacity or other emergency circumstances. For a patient who is able, use the *Disclosure of PHI for Law Enforcement* form even if he or she denies consent. If the patient is unable to provide or deny consent, you can disclose the PHI if:

PHI is needed to determine whether a violation of law has occurred, and such information is not meant to be used against the patient; and

- The law enforcement activity that depends on the PHI would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and
- In your professional judgment, you believe a disclosure is in the best interest of the patient.

Disclose the minimum necessary for this purpose. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Death due to Criminal Conduct

§164.512(f)(4)

If there is a reasonable suspicion that a patient died from criminal activity, you may alert law enforcement officials without obtaining the written authorization of the patient's representative, and without giving the patient/representative an opportunity to agree or object to the disclosure. Use the form for *Disclosure of PHI for Law Enforcement*. The Privacy Officer should preside over such disclosures, and file all associated documentation.

Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Crime on Acme Health Care Premises

§164.512(f)(5)

If a crime occurs on Acme Health Care premises the Privacy Officer should be involved in reporting the crime. It is recommended that the form for *Disclosure of PHI for Law Enforcement* be used if PHI is a part of what is reported. In the report to law enforcement officials, you can include PHI that is evidence of the crime without obtaining the written authorization of the patient or the patient's representative, and without providing the patient/representative an opportunity to agree or object to the disclosure. Include only the minimum necessary PHI that will provide evidence of the crime or help in catching the perpetrator.

Reporting a Crime in Emergencies

§164.512(f)(6)

Acme Health Care can, and may be required to by law (other than HIPAA), disclose to a law enforcement officials evidence of a crime discovered while providing emergency health care. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that. It is not necessary to obtain written authorization or agreement from the patient or the patient's representative. However, make sure that any PHI included relates to the commission and nature of the crime; the location of the crime; the victims; or the identity, description and location of the perpetrator of the crime. If the crime is abuse, neglect, or domestic violence, see the section in these Policies and Procedures on *Abuse, Neglect, or Domestic Violence*.

FREQUENTLY ASKED QUESTIONS

What is Protected Health Information?

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Protected Health Information, or PHI, is information that meets four standards:

- PHI is information that is communicated or recorded in any medium, written records, oral communication and electronic media that must be protected. For example, if you are talking with a patient and discussing health conditions on the phone, you must be careful that someone in your lobby cannot hear this information. Additionally, information that is on a computer or sent via email must be protected. If you have a computer database of patient files, for example, you must be sure that access to this information is limited. You must also be careful when working on your computer, to protect information on your computer screen.
- PHI is information that is either collected by your organization or maintained by your organization. For example, you may have a patient's previous medical record that you did not originate; you must protect these records. Information that is forwarded to someone else must also be protected. For example, if your office forwards information to a billing agency to process your bills, this information must be protected. You are also responsible for ensuring that the billing agency is keeping information secure.
- PHI is information that identifies an individual or could identify an individual. This includes basic information such as the person's name, social security number, home address, phone number, and driver's license number. However, it also includes less obvious information like place of employment, names of relatives, or physical descriptions (gender or hair color). Federal law identifies this information as *individually identifiable information*.
- PHI is information that relates to the individual's condition, treatment, or payment in the past, present, or future. For example, discussions of a patient's previous condition that has long been cured must be protected. When you are discussing treatment with a patient, you must guarantee a secure setting.

How or when can PHI be used?

As previously stated, PHI can be used or disclosed for treatment, payment, or health care operations (see "What is treatment, payment or health care operations?"). There are two more *exceptions* when you may use and disclose PHI without patient/representative approval.

- Psychotherapy notes. If the person who wrote the notes is the same person who is treating the patient, psychotherapy notes can be used by: an organization for training programs; or for legal defense of the person who created the notes. Psychotherapy notes cannot be used for any other purposes.
- Marketing under special circumstances. To use PHI for marketing usually requires authorization from the individual. There are two exceptions when authorization is

unnecessary: 1) if the communication with the patient is face to face; 2) when the marketing is for a small promotional gift of nominal value provided by the organization. For example, patients sometimes receive free samples when they receive a prescription. This marketing device would not require the written authorization of the patient.

Sample

What does it mean to receive, create, use, or disclose PHI?

This simply refers to the use of medical information. For example, in the course of treating a single patient, a doctor's office may *receive* medical records from the patient's previous physician, or another physician also treating the patient. They may also *create* new records as they examine and treat the patient. They will *use* private information, such as medical conditions and medications, in order to treat the patient. They may also need to *disclose* the information, if patients request their records, or if patients are referred to another physician. The federal rules, and the policies of Acme Health Care, use the phrase "receive, create, use, or disclose" to cover all possible uses of PHI.

What is "treatment, payment or health care operations" (TPO)?

This simply refers to the ordinary operations of a hospital or doctor's office. Treatment is the actual medical treatment of an individual, and may include medical examinations, patient referrals, or patient conferences. Payment is the processing, billing, and collection of payment for services or medical supplies. Health care operations include business management and administrative activities required to provide services. For example, administrative procedures would include implementing security policies.

What are we required to do?

You are required to ask a patient before making any disclosures. You are required to track all requests for information and all disclosures. You must document all of the following:

- The person and organization making the request;
- Date and time of the request;
- The specific PHI that is requested;
- The purpose of the PHI;
- Notification to the Patient;
- Patient authorization, restrictions or prohibition of the request.

If the patient grants disclosure, then you must document the following:

- Any restrictions on the PHI;
- The specific PHI being released;
- Date and time of the release;
- Location of the release (such as the delivery address).

For example, a dentist's office calls you to ask for a patient's x-rays and treatment records regarding a recent jaw injury. First, since the request is not in writing, you should immediately

document the request. Second, before any other action is taken, you must ask the patient if this disclosure is acceptable. Be sure to tell the patient who is requesting the information, what information is being requested, and the time frame of the request. You should document this communication. Third, document the patient's response. The patient has the right to allow, restrict, or prohibit the disclosure. If the patient permits the disclosure, then you can proceed, being careful to document the information.

All disclosure information should be reported to the Privacy Officer. An accounting of all disclosures must be maintained for six years.

When does the patient need to be notified?

The patient must be notified *before* the disclosure is made. The patient must have time to restrict the disclosure. It is the patient's right to agree to, prohibit or restrict the disclosure of PHI.

What does the patient need to know?

The patient needs to know everything about the disclosure *before* you disclose any PHI. Be sure to tell the patient *who* is requesting the information, *what* they are requesting, *why* they are making the request, and *when* they would like to receive it. It is the patient's right to agree to, prohibit, or restrict the disclosure of PHI.

Under what circumstances can PHI be used without patient authorization?

As you already know, PHI can be used for TPO. (For more information on TPO see "What is treatment, payment or health care operations?") *Any* use outside of the TPO standards, requires patient authorization.

However, there are special circumstances that would allow you to use PHI without patient authorization *or* allowing the patient an opportunity to agree or object. In most circumstances, these exceptions were created to protect the patient and public. You may use or disclose PHI without authorization or opportunity for the following reasons:

- Requirements of Law
- Public Health Activities
- Victims Of Abuse, Neglect, Or Domestic Violence
- Health Oversight Activities
- Judicial And Administrative Proceedings
- Law Enforcement Purposes
- Decedents
- Cadaveric Organ, Eye, Or Tissue Donation Purposes
- Research Purposes
- Aversions of Serious Threat To Health Or Safety
- Specialized Government Functions
- Workers' Compensation

When can PHI be disclosed without patient authorization and without allowing the patient to

agree or object?

There are special circumstances allowing you to use PHI without patient authorization *and* without allowing the patient to agree or object. In most circumstances, these items were created to protect the patient and the public. You may use or disclose PHI without authorization or opportunity to object, for public health activities, victims of abuse, neglect or domestic violence, health oversight activities, judicial and administrative proceedings, decedents, cadaveric organ, eye, or tissue donation purposes, research purposes, aversions of serious threat to health or safety, specialized government functions, or for purposes of workers' compensation. The requirements for disclosure are summarized below.

Note: In every instance, you must include the Privacy Officer, and you must document all details of the disclosure. Even though the same notifications may not be required, you are always responsible for carefully documenting any disclosure.

For public health activities, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

A public health authority may be authorized by law to collect PHI in order to prevent or control disease, injury, or disability. A public health authority includes anyone authorized by law to act in that capacity. Some examples of public health activities include: county health departments, a state welfare or child services organizations, or the Federal Drug Administration.

Public Health authorities are allowed to collect PHI for several reasons, and you are allowed to disclose such information without patient authorization and without allowing the patient to agree or object. For example, a public health department may collect vital records such as death and birth information or they may lead public health investigations into a widespread occurrence of a disease. Another example could include the Federal Drug Administration tracking a recalled medication, or investigating a drug or food supplement that may have negative side effects.

PHI may also be disclosed in cases of people being exposed to a communicable disease or at risk of contracting or spreading a disease. PHI may be disclosed in order to notify and/or treat an infected person.

PHI may also be disclosed to an employer if the employee is engaged in providing health care, as it relates to medical surveillance or to a work-related illness or injury. In this case however, the employer must provide notice to the employee that PHI will be disclosed.

For law enforcement purposes, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You can disclose PHI to a law enforcement official or other government entity charged with this responsibility without patient authorization and without allowing the patient to agree or object for these reasons:

- You can provide PHI as already required by law. For example, suspected cases of child abuse or neglect must be reported to a law enforcement officer.

- Another example of PHI disclosures as required by law is court related requests. You can provide PHI in compliance with a court order, grand jury subpoena, or a civil administrative request. In this case, the PHI requested must be relevant to the situation; it must be specific and limited in scope, and should only be turned over when de-identified information could not be used.
- Limited information for identification and location purposes can be provided to law enforcement authorities without authorization or notice. You can provide PHI for identifying or locating a suspect, fugitive, material witness, or missing person. The following is the limited information that can be provided:
 - 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);
 - A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos.

You cannot disclose any PHI related to a persons DNA, dental records, or typing, samples or analysis of body fluids or tissue.

- If someone is a victim of a crime or suspected to be a victim of a crime, PHI can be disclosed. You must have the individual's consent to the disclosure, or proof that the individual is incapacity or emergency circumstances prevent obtaining consent.
- You may disclose PHI to a law enforcement officer about an individual who has died if there is suspicion that death may be the result of criminal conduct.
- You can also disclose PHI to a law enforcement official if you believe such information is evidence of criminal conduct that occurred on Acme Health Care's premises.
- Health care providers who are providing emergency health care, can disclose PHI to a law enforcement official in order to alert law enforcement to:
 - The commission and nature of a crime;
 - The location of such crime or of the victim(s) of the crime;
 - The identity, description, and location of the perpetrator of the crime.

For information about decedents, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining the cause of death, or other reasons. You may also disclose PHI to funeral directors, as necessary to carry out their duties with respect to the decedent. This does

not require patient authorization.

In order to avert a serious threat to health or safety, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You can disclose PHI if:

- You believe, in good faith, that a disclosure of PHI is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is made to a person(s) reasonably able to prevent or lessen the threat. However, PHI related to counseling or therapy cannot be disclosed.
- It is necessary for law enforcement authorities to identify or apprehend an individual who has admitted to a violent crime and you believe serious physical harm may have occurred. You can also release PHI if it appears that a patient/ individual has escaped from a correctional facility or lawful custody.

AUTHORITY

45 CFR §164.502 (2002)

45 CFR §164.506 (2002)

45 CFR §164.508 (2002)

45 CFR §164.510 (2002)

45 CFR §164.512 (2002) and 45 CFR §164.514 (f) and (g) (2002)

Acme Health Care

DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) FOR LAW ENFORCEMENT

Date: _____

Provide the Name, Title, Organization and Phone Number of Person Making Request:

We are requesting records for:

Patient's Full Name: _____

SSN or Other Patient Identifier: _____

This disclosure of protected health information is:

- Required and limited by law. Citation _____ . A description of the PHI requested is attached. If a current copy of the law is not attached, Acme Health Care may need extra time to verify the requirements and limits of the law.
- In compliance with, and limited by a court order, warrant, subpoena or summons issued by a judicial officer or a grand jury subpoena. The document is attached, and if it is not specific about what is required, a description of the PHI needed is attached as well.
- Is in compliance with the attached administrative request, such as an administrative subpoena or summons, a civil investigative demand, authorized investigative demand or similar process authorized by law that:
 - Is relevant and material to a law enforcement inquiry; and
 - Limits the amount of PHI requested to only what is reasonably necessary for this purpose; and
 - Cannot be de-identified (stripped of all information that would reveal the patient's identity).
- Because Acme Health Care has reason to believe that a person or the public will be harmed, and is providing this information to someone who can reasonably prevent it.
- About an individual who appeared to Acme Health Care to be an escaped inmate and Acme Health Care is providing information that is necessary to identify or apprehend the individual.
- About a crime Acme Health Care learned about while providing emergency health care services, and is reporting it and its location to law enforcement officials along with information to help them determine the perpetrator's identity, description and/or location.
- In regard to a crime that occurred on Acme Health Care premises and Acme Health Care believes that the information it is providing is evidence of that crime.
- About the victim of a crime per the request of a law enforcement official; and
 - Written permission from the victim to disclose PHI for this purpose is attached; or
 - Written permission from the victim could not be obtained because of the victim's incapacity or due to emergency circumstances. The law enforcement entity accepting/requesting this PHI believes that the crime was committed by someone other than the victim and the PHI will not be used against the victim. Immediate law enforcement activity depends upon this PHI and such activity will be adversely affected without it. Acme Health Care can withhold this PHI from a requestor if Acme Health Care believes that providing it is not in the best interest of the victim.

Sample

- About a deceased person and Acme Health Care:
 - Suspects that the death is a result of a crime and is alerting law enforcement officials; or
 - Is providing PHI to a coroner or medical examiner to assist in determining the deceased's identification, cause of death, or for other duties authorized by law.
- To a corrections or law enforcement official who states that PHI about an inmate in their custody is necessary to:
 - Provide health care to the inmate; or
 - Ensure the health and safety of inmates, corrections staff or transport staff; or
 - Administer law enforcement, safety, security and good order at the correctional institution.

- To identify or locate a suspect, fugitive, material witness or missing person and the following information is needed regarding a patient of Acme Medical Services per the request of a law enforcement official. Mark the information below that is being disclosed.
- About a statement heard by an employee of Acme Medical Services from or about someone who participated in a violent crime that may have caused serious physical harm to someone. An account of the statement will be included with this disclosure. However, this information cannot be revealed about a patient if it was obtained while the patient was receiving or requesting treatment such as counseling or therapy for the kind of behavior that resulted in a violent crime or physical harm.

Mark the information below that is being disclosed.

Acme Medical Services will provide only the information required by the blanks below.

- Name _____
- Address _____
- Birth date _____ and birth place _____
- Social Security number _____
- ABO blood type and Rh factor _____
- Type of injury _____
- Date _____ and time _____ of treatment.
- Distinguishing characteristics _____

Sample

Signature of Requestor: _____
Date: _____

Signature of Acme Health Care staff providing information:

Date: _____