

**UNIVERSITY OF WYOMING**

**HIPAA POLICY 3.3(C)**

**PERMITTED DISCLOSURES WITHOUT INDIVIDUAL'S AUTHORIZATION OR OPPORTUNITY TO OBJECT**

- I. **PURPOSE.** The purpose of this policy is to document the limited circumstances under which a UW Covered Component may use or disclose an individual's PHI without first obtaining a valid authorization from that individual. Uses and disclosures addressed in this policy are not exhaustive and do not capture all permissible uses or disclosures by law or encountered in daily operations. Workforce members are encouraged to contact their local Privacy Officer or the UW Office of General Counsel with questions relating to use or disclosure addressed generally in this policy.
- II. **DISTINCTION BETWEEN AUTHORIZATION AND CONSENT OF AN INDIVIDUAL:** For purposes of these HIPAA policies, authorization refers to the written authorization of individuals as required by HIPAA. Consent refers to the verbal or written consent required by state law or best practices for those activities that HIPAA would permit without a consent (e.g. treatment, payment and health care operation activities.)
- III. **PERMITTED DISCLOSURES WITHOUT AUTHORIZATION.** These situations allow a covered entity to use and disclose PHI without an individual's authorization.
  - a. **Business Associates:** A UW Covered Component may disclose PHI to a business associate and may allow a business associate to create, receive, maintain, or transmit protected health information on its behalf, if the covered entity obtains satisfactory assurance that the business associate will appropriately safeguard the information. The assurances must be documented through written agreement that meets specific requirements set forth in section 45 C.F.R. 164.504(e).
  - b. **Cadaveric Organ, Eye or Tissue Donation Purposes:** A UW Covered Component may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.
  - c. **Decedents:** When a person dies, the data retains its classification as PHI, and its confidentiality as it had when the person was living, for a period of 50 years. After a period of 50 years has passed, it is no longer considered PHI pursuant to the definitions under HIPAA.
    - i. **Coroner or Medical Examiner:** A UW Covered Component may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death or other duties as assigned by Wyoming statutes.
    - ii. **Family:** A UW Covered Component may disclose PHI about a decedent to a family member, or other person who was involved in the individual's health care or payment for care prior to the individual's death, unless doing so is inconsistent with any prior expressed preference of the deceased individual that is known to the UW Covered Component.

1. 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.
  2. Disclosures permitted under this section would not apply to more than a limited disclosure; for example, a complete disclosure of the entire medical record is not permitted unless the family member is also the personal representative and meets the requirements of section iv below.
- iii. **Funeral Directors:** A UW Covered Component may disclose PHI to funeral directors, consistent with applicable laws, as necessary to carry out their duties with respect to the decedent. PHI may be disclosed before the death of an individual when it is reasonable to do so and necessary for the funeral director to carry out their duties.
- iv. **Personal Representatives:** The UW Covered Component, in addition to HIPAA provisions that allow disclosure without authorization, may release PHI to the personal representative of the estate, in accordance with Wyoming law, with a signed, written HIPAA authorization from the personal representative of the decedent, who can authorize the release.
  1. Proof of death: The following are types of verifications that may be accepted by a UW Covered Component as proof that an individual has died:
    - a. Death Certificate
    - b. Autopsy Report
    - c. Obituary
    - d. Chapel Funeral Card
  2. Proof of personal representative: The personal representative of a decedent for HIPAA purposes must be an executor, administrator, or other person who has authority under applicable Wyoming state law to act on behalf of the decedent or the decedent's estate.
  3. Chemical Dependency Exception: Under Federal statutes, private data about an individual who has received treatment for chemical dependency does not become public after the data subject's death.
  4. Rights: If the personal representative has been denied access to the decedent's PHI, the personal representative may bring an action in district court to obtain access. The covered entity may present the court reasons why the data should not be released.
- d. **Health Oversight Activities:** A UW Covered Component may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil administrative or criminal investigations; inspections, licensure or disciplinary actions; civil, administrative or criminal proceedings or actions; or other activities necessary for the proper oversight of:
  - i. The health care system

- ii. Government benefit programs for which protected health information is relevant to benefit eligibility.
  - iii. Entities subject to government standards for compliance with respect to PHI.
  - iv. Entities subject to civil rights laws for which PHI is necessary to determine compliance.
  - v. Exception: This does not include an investigation or other activity in which the individual is the subject of an investigation that does not arise out of and is not directly related to the receipt of health care, a claim for public benefits related to health or qualification for, or receipt of, public benefits or services.
- e. **Incidental Use and Disclosures:** Disclosures of PHI that are “incident to” an otherwise permitted use or disclosure is permitted without an individual’s authorization as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule and the information being shared was limited to the “minimum necessary” as required by the Privacy Rule.
- f. **Individual.** A UW Covered Component may release PHI to the individual without requiring the authorization form.
- g. **Judicial and Administrative Proceedings:** A UW Covered Component should consult UW Office of General Counsel and its local Privacy Officer prior to disclosing any PHI to the requesting party under this section. The Privacy Rules permits disclosure of PHI in the course of any judicial or administrative proceeding:
- i. In response to an order of a court or tribunal provided that the UW Covered Component discloses only the protected health information expressly authorized by such order; ; or
  - ii. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
    - 1. The UW Covered Component receives satisfactory assurance, as described in paragraph (iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
    - 2. The covered entity receives satisfactory assurance, as described in paragraph (iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (v) of this section.
  - iii. For purposes of this section, a UW Covered Component receives satisfactory assurances from a party seeking PHI if the UW Covered Component receives from such party a written statement and accompanying documentation demonstrating that:
    - 1. The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

2. The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
  3. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
    - a. No objections were filed; or
    - b. All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- iv. For purposes of this section, a UW Covered Component receives satisfactory assurances from a party seeking protected health information, if it receives from such party a written statement and accompanying documentation demonstrating that:
1. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
  2. The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
- v. A qualified protective order means, with respect to PHI in this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
1. Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
  2. Requires the return to the UW Covered Component or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.
- vi. A UW Covered Component may disclose PHI in response to lawful process without receiving satisfactory assurances as set forth above, if the UW Covered Component makes reasonable efforts to provide notice to the individual or seeks a qualified protective order.
- vii. Other UW process and procedures relating to the receipt and processing of court orders shall also be followed and consulted in all cases.
- h. **Law Enforcement Purposes:** A UW Covered Component may disclose PHI to law enforcement officials in support of law enforcement activities, in the some circumstances, including those listed below. Please consult the Privacy Officer and UW Office of General Counsel as soon as the need for such a disclosure arises.
- i. **Pursuant to Process or Required by Law.** When required to do so by law or by legal proceeding:
    1. To report occurrences of certain wounds or other physical injuries, to the extent and within the limitations required by statute, but excluding those laws requiring disclosures for child abuse or neglect and

disclosures about victims of abuse, neglect, or domestic violence which are discussed in other sections of this policy.

2. In response to the following:

- a. A court order or court-ordered warrant, or subpoena or summons issued by a judicial officer;
- b. A grand jury subpoena; or
- c. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

- i. The information is relevant to a legitimate law enforcement inquiry.
- ii. The request is specific and limited to the scope and purpose of the investigation; and
- iii. De-identified information could not be reasonably used instead of PHI.

ii. **Limited Information for Identification and Location Purposes.** In support of law enforcement efforts to identify or locate a suspect, fugitive, witness or missing person, a UW Covered Component may disclose PHI for the purpose of identifying or locating a suspect, fugitive, material witness or mission person provided that:

1. This disclosure is very limited to specific information listed in the statute, such as name, address, date and place of birth, blood type, type of injury, date and time of treatment, date and time of death (if applicable) and descriptions of distinguishing physical characteristics (e.g. weight, gender, hair color, scars, tattoos, etc.)
2. A UW Covered Component may NOT disclose PHI relating to individual's DNA, dental records, or typing, samples or analysis of body fluids or tissue (except ABO blood typing and Rh factor).

iii. **Victims of a Crime.** A UW Covered Component may disclose PHI in response to a law enforcement official's request for PHI about an individual who is suspected to be the victim of a crime only if:

1. The individual agrees to the disclosure; or
2. The UW Covered Component is unable to obtain the patient's agreement because of incapacity or other emergency, provided that:
  - a. Law enforcement represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
  - b. Law enforcement represents that immediate enforcement activity depends upon the disclosure and would be materially and adversely affected by waiting for the individual to agree or disagree, and

- c. Disclosure is in the best interests of the individual as determined by UW Covered Component in the exercise of its professional judgment.
    - iv. **Decedents.** Disclosures regarding deceased individuals who covered entity suspects death may have occurred as the result of a crime
  - v. **Reporting Crimes in Emergencies.** A UW Covered Component providing emergency health care may disclose PHI if necessary to alert law enforcement to the commission of and nature of a crime; the location of such crime or victim of such crime; and the identity, description and location of the perpetrator of such crime. If the emergency is result of abuse, neglect or domestic violence of the individual in need of care, disclosures are subject to that specific section under this policy.
  - vi. **Crime on Premises.** A UW Covered Component may disclose PHI if there is a suspicion of crimes committed at the UW Covered Component's premises. This only requires a good faith belief by the facility that criminal conduct has occurred on the premises.
  - vii. **Chemical Dependency Exception:**
    - 1. Under Federal statutes data about chemical dependency clients is classified as private and release to law enforcement agencies can take place only under limited circumstances. Law enforcement persons generally must have a court order to obtain an individual's chemical dependency data. A subpoena is generally not sufficient authority to authorize disclosure of chemical dependency information.
    - 2. Always notify the Privacy Officer and UW Office of General Counsel as soon as such a reporting need arises.
- i. **Public Health Activities:** A UW Covered Component may, as authorized by law, disclose PHI to public health or government authorities or their agents to the following:
    - i. **Public Health Authorities.** Public health authorities authorized by law to collect or receive information for the purposes of preventing or controlling disease, injury or disability, including, but not limited to:
      - a. Reporting of disease or injury.
      - b. Vital events, such as birth or death.
      - c. The conduct of public health surveillance, investigations or interventions.
    - ii. **Officials of Foreign Governments.** Official of foreign governments acting in collaboration with public health authorities, and who have been authorized to receive such information by the public health authority.
    - iii. **Reports of Child Abuse.** Public health or appropriate governmental authorities authorized by law to receive reports of child abuse or neglect.
    - iv. **FDA.** A person subject to the jurisdiction of the Food and Drug Administration (FDA), with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

1. To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations.
  2. To track FDA-regulated products.
  3. To enable product recalls, repairs, or replacement or “look-back” or review of product safety and performance histories (including locating and notifying individuals who have received products that have been recalled, withdrawn or are the subject of “look-back”).
  4. To conduct post marketing surveillance.
- v. **Employer.** An employer if the UW Covered Component is providing healthcare at request of an employer to conduct an evaluation relating to medical surveillance of the workplace or to evaluate whether the individual has a work-related illness or injury and the individual’s employer is doing so to comply with its obligations under state law or the Occupational Safety, Mine Safety and Health Administration regulations (29 CFR parts 1904 through 1928 or 30 CFR parts 50 through 90) to record such illness or injury or to carry out its responsibilities for workplace medical surveillance.
1. Disclosure is limited to findings concerning the work-related illness or injury or medical surveillance.
  2. The UW Covered Component needs to provide written notice to the individual that the PHI will be disclosed to individual’s employer.
    - a. The notice may be given to the individual at the time the health care is provided; or
    - b. If the health care is provided on the work site, by posting a notice in a prominent location where the care is provided.
- vi. **School.** A school about an individual who is a student or prospective student if PHI disclosed is limited to proof of immunization, the school is required by law to have proof of immunization prior to admitting the individual and the UW Covered Component obtains and documents agreement to the disclosure from either the parent or guardian, or the individual if the individual is an adult or emancipated minor.
- vii. **To Individuals for Public Health:** As authorized by law and to support the interventions or investigations of public health authorities, a UW Covered Component may disclose PHI to individuals who may have been exposed to a communicable disease, or may otherwise be at risk of contracting or spreading a disease or condition.
- j. **Research Purposes:** In accordance with UW’s policy regarding disclosures for research purposes, a UW Covered Component may use or disclose PHI for research, provided that:
- i. An Institutional Review Board (IRB) waives the authorization requirement; or
  - ii. The researcher meets certain criteria warranting the release of PHI; or
  - iii. The researcher provides affirming evidence that the research involves decedents only.

- k. **Serious Threat to Health or Safety:** A UW Covered Component may disclose PHI without an authorization if workforce members have reasonable cause to believe that:
    - i. The disclosure is to a person or persons reasonably able to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; or
    - ii. The disclosure is necessary for law enforcement authorities to identify or apprehend an individual:
      - 1. Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or
      - 2. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
      - 3. For releases of PHI for number 1 above, only limited information may be disclosed, which is the same information that may be released when law enforcement needs the information for purposes of identifying or locating a suspect, fugitive or missing person. (See 165.512(f)(2)(i)).
    - iii. Exceptions: Disclosures of PHI may not be made by the covered entity if the information is learned by the covered entity in the course of treatment of the individual to affect the propensity to commit the criminal conduct, or during counseling or therapy; or through a request by the individual to initiate or be referred to such treatment, counseling or therapy.
    - iv. Presumption of Good Faith: A disclosure under the provisions of this policy must be based on actual knowledge or reliance on a credible representation by a person with apparent knowledge or authority.
- I. **Specialized Government Functions:** A UW Covered Component may disclose PHI for some specialized government functions, including:
  - i. **Military and Veterans Activities.**
    - 1. **Armed Forces and Foreign Military Personnel:** A UW Covered Component may disclose PHI regarding individuals who are members of the Armed Forces when relevant to determine the individuals' ability to participate in a military mission, as determined by an appropriate military command authority to assure proper execution of the military mission, if the military authority has published by notice in the Federal Register the following:
      - a. Appropriate military command authorities; and
      - b. The purpose for which the PHI may be used and disclosed.
    - 2. **Foreign Military Personnel.** A covered entity may also disclose PHI regarding individuals who are Foreign Military Personnel when relevant to determine the individuals' ability to participate in a military mission, as determined by their appropriate foreign military authority and subject to the same limitations set forth above.
  - ii. **National Security and Intelligence Activities.** A UW Covered Component may disclose PHI to authorized Federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. Section 401) and its implementing authority.

- iii. **Protective Services for the President and Others.** A UW Covered Component may disclose PHI protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by [18 U.S.C. 3056](#) or to foreign heads of state or other persons authorized by [22 U.S.C. 2709\(a\)\(3\)](#), or for the conduct of investigations authorized by [18 U.S.C. 871](#) and [879](#).
- iv. **Correctional institutions and other law enforcement custodial situations.** A covered entity may disclose PHI to:
1. A correctional institution in some instances, or
  2. A law enforcement official having lawful custody of an inmate or other individual, PHI about such inmate or individual if the correctional institution or law enforcement official represents that the PHI is necessary for:
    - a. The provision of health care to such individuals;
    - b. The health and safety of such individual or other inmates;
    - c. The health and safety of the officers or employees of or others at the correctional institution;
    - d. The health and safety of such individuals and officers or other people responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
    - e. Law enforcement on the premises of the correctional institution; or
    - f. The administration and maintenance of the safety, security, and good order of the correctional institution.
- m. **Victims of abuse, neglect or domestic violence:** Except as otherwise provided in these policies and except for reports of child abuse or neglect made, a covered entity may disclose to a social services agency or other appropriate government agency authorized by law to receive reports of abuse, neglect or domestic violence, PHI of an individual whom workforce members reasonably believe is the victim of such abuse.
- i. **Authorized Disclosures.** Disclosures are authorized by law when one or more of the following circumstances apply:
1. The individual about whom the PHI was obtained agrees to the disclosure; or
  2. The covered entity, in the exercise of its professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
  3. A law enforcement or public official who is authorized to receive such a report represents to the covered entity that the PHI is necessary for an immediate enforcement activity; and:
    - a. The individual is incapacitated and therefore unable to grant permission for the disclosure; and
    - b. Waiting for the individual to agree or disagree would be materially and adversely affect the authority's ability to carry out an immediate enforcement activity.

- ii. **Informing the individual.** If the covered entity discloses information about an individual that it suspects is the victim of abuse, neglect or domestic violence, it shall promptly inform the individual that the disclosure has been or will be made. However, it is not required to inform an individual, or their personal representative, that the disclosure has been or will be made if the covered entity in its professional judgment reasonably believes:
    - 1. Doing so would place the individual at risk of serious harm; or
    - 2. The personal representative authorized to receive information about the disclosure on behalf of the individual, is responsible for the abuse or neglect suffered by the individual and informing such person would not be in the best interests of the individual.
- n. **Whistleblowers:** A covered entity would not be out of compliance with the HIPAA Privacy Regulations if a member of its workforce or a business associate discloses protected health information (PHI), provided that:
  - i. The workforce member or business associate believes in good faith that the covered entity had engaged in conduct that is unlawful, or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and
  - ii. The disclosure is to:
    - 1. A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity, or to an appropriate healthcare accreditation organization for the purpose of reporting an allegation of failure to meet professional standards or misconduct; or
    - 2. An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the circumstances that have led or may lead to the individual's decision to act as, and actions as, a whistleblower, as defined by law.
- o. **Worker's Compensation:** A covered entity may disclose protected PHI to the extent necessary to comply with laws relating to workers' compensation or other similar programs established by law to provide benefits for work-related injuries or illnesses without regard to fault.

**IV. REFERENCES/APPLICABLE LAW:**

- a. 45 C.F.R. Section 164.502e(1)
- b. 45 C.F.R. Section 164.512

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