



**COUNTY OF SAN BERNARDINO  
STANDARD PRACTICE**

No. 14-03 SP 07

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EFFECTIVE DATE June 10, 2016

**POLICY: HIPAA POLICY  
SP: Patient Privacy Rights**

**APPROVED**  
GREGORY C. DEVEREAUX  
Chief Executive Officer

**PURPOSE**

To establish standards regarding the privacy rights of patients.

**DEPARTMENTS AFFECTED**

All County agencies, departments and Board-governed Special Districts that are determined to be covered by Health Insurance Portability and Accountability Act (HIPAA).

**DEFINITIONS**

*Business Associate:* A person or organization that on behalf of a covered entity, other than a member of the covered entity's workforce creates, receives, maintains, or transmits Protected Health Information (PHI).

*Covered Entity:* A health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a HIPAA covered transaction.

*Disclosure:* The release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.

*Electronic Protected Health Information (ePHI):* Protected Health Information in electronic form.

*Health Care Component (HCC):* County departments or programs that meet the definition of a Covered Entity or Internal Business Associate.

*Health Insurance Portability and Accountability Act (HIPAA):* A federal law designed to provide privacy and information security standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals, and other health care providers. (45 C.F.R. Parts 160 and 164)

*Health Oversight Agency:* An agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility in compliance, or to enforce civil rights laws for which health information is relevant.

*Internal Business Associate:* A County department or program that provides services to another County department or program covered by HIPAA that if it was a separate legal entity would fall within the definition of a Business Associate.

*Notice of Privacy Practices:* A notification provided to patients that describes how their information may be used or shared and how they can exercise their patient privacy rights.

*Privacy Rule:* Establishes national standards to protect individuals' medical records and other personal health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections. (45 C.F.R. Part 164 Subpart E).

*Protected Health Information (PHI):* Individually identifiable health information that is transmitted by, or maintained in, electronic media or any other form or medium (excludes individually identifiable health information in employment records held by Covered Entity in its role as employer).

*Workforce:* Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity or internal business associate, is under the direct control of such covered entity or internal business associate, whether or not they are paid by the covered entity or internal business associate.

### **PROCEDURES**

A. HIPAA provides an individual with certain privacy rights regarding their PHI. Health Care Component (HCC) departments shall have policies and procedures that address those rights and establish methods by which an individual may exercise those rights. At a minimum HCC departments shall have policies and procedures that address a patient's right to:

1. Receive a copy of the Notice of Privacy Practices and a method for obtaining an acknowledgement of receipt for that Notice;
2. Access their PHI;
3. Request an amendment of their PHI;
4. An Accounting of Disclosures of their PHI;
5. Request special restrictions on the use or disclosure of their PHI; and
6. Request a restriction on, or special directions regarding, the manner and method of communicating PHI.

### **B. Notice of Privacy Practices**

An individual has a right to receive notification regarding the HCC department's privacy practices so the individual can understand how their PHI will be used and disclosed by the HCC department. The County has developed a template Notice of Privacy Practices containing the minimum legal requirements to guide HCC departments in developing the content for their Notice of Privacy Practices. The template Notice of Privacy Practices is available on the Human Resources Office of Compliance and Ethics website.

The template Notice may be customized to reflect the privacy practices of the HCC department, but the HCC department shall adhere to the minimum legal requirements for its line of business. Once distributed, the HCC department shall adhere to the practices contained in the Notice until it has been revised and re-published as required by law.

1. HCC departments with a direct treatment relationship shall:
  - a. Provide the notice to the individual no later than the date of first service delivery. If the first service delivery is provided electronically, the HCC department must send the notice electronically, automatically and contemporaneously with the first service delivery. In an emergency treatment situation, the notice must be provided as soon as reasonably practicable;
  - b. Make the notice available for individuals to take with them;

- c. Post the notice in a clear and prominent location where it is reasonable to expect patients to be able to read the notice;
  - d. Post the notice prominently on any website that it maintains containing information about the department's services and make the notice available electronically through the website; and
  - e. Upon revision, make the revised notice available upon request and post the revised notice in the facility and on the website.
2. HCC departments that do not have a direct treatment relationship with individuals must make notices available to individuals only if they request one. HCC departments that are health plans must provide a Notice of Privacy Practices to their clients every three (3) years.
  3. Except in the case of an emergency treatment situation, an HCC department must make a good faith effort to obtain a written acknowledgment that the individual received the Notice of Privacy Practices. If the individual refuses to sign or a signed acknowledgment is not obtained for some other reason, the HCC department shall document the good faith efforts taken and the reason why the acknowledgment was not obtained.
  4. HCC departments must promptly revise their Notice whenever there has been a material change to the uses or disclosures, the individual's rights, the HCC department's legal duties, or other privacy practices stated in the notice. Except when required by law, a material change to any term of the Notice shall not be implemented prior to the effective date of the Notice in which the material change is reflected.
  5. HCC departments must document compliance with the Notice and Acknowledgment requirements by retaining copies of these documents for a minimum of six (6) years.

**C. Access to PHI**

1. In general, individuals, or their personal representative (hereinafter collectively referred to as "individuals") may access, inspect, and receive a copy of the PHI that was created or received by an HCC department and is maintained in a designated record set, except as provided for by law.
2. Individuals requesting access to records must submit their request to the HCC department in writing. If the request indicates that the individual is seeking records from more than one County department, the request form shall be forwarded to the County HIPAA Privacy Officer for response. The County HIPAA Privacy Officer will coordinate the compilation of records from each department so that a single response is provided to the records request.
3. HCC departments must provide PHI in the form and format requested by the individual if it is readily producible in such form and format. If the requested form or format is not readily producible, HCC departments must give the individual a readable hard copy or provide the information in another mutually agreed upon format.
4. If an HCC component maintains PHI electronically and an individual requests access to ePHI, HCC departments must provide an electronic copy, but are not required to provide direct access to electronic records systems. Requests for electronic copies of records must be provided in the form or format requested if it is readily producible in such form or format. If it is not readily producible in the form or format requested, the HCC department must provide it in a machine-readable electronic form and format as agreed to by the HCC department and the individual. Machine readable electronic form or format means digital information stored in a standardized format enabling the information to be processed and analyzed by computer.

Examples include MS Word, Excel, plain text, HTML, text-based PDF, etc. If the individual declines to accept any of the formats that are readily producible by the HCC department, a hard copy may be provided to fulfill the request.

5. If an individual's request for access directs the HCC department to transmit the PHI directly to another person, the HCC department must provide the copy to the person designated on a valid authorization. The request must be in writing, signed by the individual, and clearly identify the designated person and where to send the information. ePHI delivered or transmitted outside the HCC department shall be encrypted utilizing the County or department encryption software. An exception can be made for circumstances where technological incompatibility prevents successful delivery or transmission of the information, or when the individual has requested the information not be encrypted. In those instances the HCC department will work with the receiving party to provide the most secure method of delivery or transmission possible. When an individual has requested the information not be transmitted in an encrypted form, the HCC department may send unencrypted PHI at their discretion, if the HCC department has advised the individual of the risks, and the individual still prefers the unencrypted Email.
6. Requests for access to or copies of PHI shall be completed by providing access to, or copies of, the applicable records, or portions of the records, requested to the individual.
7. HCC departments may only provide a summary of requested PHI, when an individual requests or agrees, in advance, to receiving a summary. If a summary is prepared, the following requirements must be met:
  - a. Summary of the entire record unless the individual limits the request to a specific injury, illness, episode, hospitalization or timeframe.
  - b. Relative to the a specific injury, illness, episode, hospitalization or timeframe, the summary must include:
    - i. Chief complaint, including pertinent history
    - ii. Findings from consultation and referrals to other health care providers
    - iii. Diagnosis, where determined
    - iv. Treatment plans, including any medications prescribed
    - v. Progress of the treatment
    - vi. Prognosis, including significant continuing problems or conditions
    - vii. Pertinent reports of diagnostic procedures and all discharge summaries
    - viii. Objective findings from the most recent physical examination, including blood pressure, weight and actual values from laboratory tests
  - c. All current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider.
8. Access to records for inspection by the individual must be provided within five (5) working days of receiving the written request. Copies must be provided within fifteen (15) days of receipt of request for copies.

9. An HCC department may only deny an individual access to PHI when permitted by law. If the HCC department denies the request, in whole or in part, it must provide the individual with a written denial as required by law. When an HCC department intends to deny access or copies of PHI to the individual, they should consult with the HCC department privacy officer prior to notifying the individual of the denial of access.
10. HCC departments shall have a policy that describes how an individual can request access to, and receive copies of, PHI in the designated record set, and which documents the titles of the persons or offices responsible for receiving and processing requests. HCC departments must maintain the associated documentation as required by law.

**D. Requests for Amendment of PHI**

1. An individual has the right to have an HCC department amend PHI or a record about the individual in a designated record set for as long as the PHI is maintained in the designated record set.
2. HCC departments shall have a policy that describes how an individual can request an amendment to PHI in the designated record set, which documents the titles of the persons or offices responsible for receiving and processing requests for amendments, the process for actually amending the PHI and maintenance of the documentation as required by law. HCC departments shall act on the individual's request in a timely manner, and in no case later than 60 days after receipt of request.
3. An HCC department that has been notified by another covered entity of an amendment to an individual's PHI must amend the PHI in designated record sets as required by law.
4. An HCC may deny an individual's request for amendment if it determines that the PHI or record(s) that is the subject of the request:
  - a. Was not created by the HCC department, unless the individual provides a reasonable basis to believe that the originator of the PHI is no longer available to act on the requested amendment;
  - b. Is not part of the designated record set;
  - c. Would not be information available to the individual's inspection under law; or
  - d. Is accurate and complete.

**E. Accounting of Disclosures of PHI**

1. An individual has a right to receive an accounting of disclosures of PHI made by an HCC department.
2. The HCC department must provide the individual with a written accounting for the time requested, or for disclosures that occurred during the last six (6) years, including disclosures to or by business associates of the HCC department. The accounting must include:
  - a. The date of the disclosure;
  - b. The name of the entity or person who received the PHI and, if known, the address of such entity or person;
  - c. A brief description of the PHI disclosed; and

- d. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure under 45 C.F.R. §164.502(a)(2)(ii) or 164.512, if any.
3. HCC departments must account for the following disclosures of PHI when made without a HIPAA-compliant authorization from the patient, including but not limited to:
    - a. In connection with judicial and administrative proceedings (for example, pursuant to a subpoena or court order)
    - b. For public health activities and reporting
    - c. To the Food and Drug Administration
    - d. To report injuries by firearms, assaultive or abusive conduct
    - e. About victims of abuse, neglect, domestic violence
    - f. For health oversight activities (unless for treatment, payment or operations)
    - g. To a law enforcement official
    - h. To coroners, medical examiners, funeral directors
    - i. For cadaveric organ, eye or tissue donation
    - j. For certain specialized government functions
    - k. For workers' compensation purposes
    - l. To business associates (unless for treatment, payment or operations)
    - m. To researchers
    - n. To the Secretary of the U.S. Department of Health and Human Services
    - o. To avert a serious threat to health or safety
    - p. Disclosures required by law
    - q. Unlawful and unauthorized disclosures outside the facility (breaches)
  4. The following do not require an accounting of disclosures:
    - a. To carry out treatment, payment and health care operations permitted by law;
    - b. To the individual regarding their own PHI;
    - c. Incident to a use or disclosure otherwise permitted or required by the Privacy Rule;
    - d. Pursuant to a valid authorization;
    - e. For a facility directory or to persons involved in the individual's care or other notification purposes as permitted by law;

- f. For national security or intelligence purposes as provided in 45 C.F.R. §164.512(k)(2);
  - g. To correctional institutions or law enforcement officials as permitted or required by law;
  - h. As part of a limited data set in accordance with 45 C.F.R. §164.512(e); or
  - i. That occurred prior to the compliance date for the HCC department.
5. The first accounting to an individual in any 12 month period must be provided without charge. HCC departments shall have a policy which describes how an individual can request an accounting of disclosures of PHI as provided by the Privacy Rule and which documents the titles of the persons or offices responsible for receiving and processing requests for an accounting by individuals.
6. An accounting of disclosures is necessary for disclosures made for research purposes. HCC departments are not required to inform individuals each time PHI is disclosed for research purposes. If an accounting of disclosures is requested by an individual and the HCC department has made a disclosure for research purposes for 50 or more individuals, the accounting may, with respect to such disclosures for which the PHI about the individual may have been included, provide a simplified accounting which includes the following:
  - a. The name of the protocol of research activity
  - b. A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
  - c. A brief description of the type of PHI that was disclosed;
  - d. The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;
  - e. The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and,
  - f. A statement that the PHI of the individual may or may not have been disclosed for a particular protocol or other research activity.
7. An HCC department may suspend or place a temporary hold on an individual's right to receive an accounting of disclosures when requested by a Health Oversight Agency or Law Enforcement Official.
  - a. If the agency or official provides a written statement that specifies: (1) such an accounting to the individual would be reasonably likely to impede the agency's activities; and, (2) the time for which such a suspension is required, then the release of the accounting shall be suspended for the time specified by the agency or official.
  - b. If the agency or official provides an oral statement that a suspension is necessary, the HCC department must: (1) document the statement including the identity of the individual making the statement and the agency or official on whose behalf the statement is made; (2) temporarily suspend the individual's right to an accounting subject to the statement; and, (3) limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless a written statement providing a time limit is submitted during the 30 days.

**F. Requests for Special Restrictions on PHI**

1. An HCC department must permit an individual to request that the covered entity restrict:
  - a. Uses and disclosures of PHI about the individual to carry out treatment, payment or health care operations; and
  - b. Information released to family or close friends involved in the patient's care or payment for that care, or to notify a family member of the patient's location.
2. An HCC department is not required to agree to a restriction except when an individual requests PHI not be disclosed to a health plan, if:
  - a. The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law; and
  - b. The PHI pertains solely to a health care item or service for which the individual or person other than the health plan on behalf of the individual, has paid the HCC department out of pocket in full.
3. An HCC department that agrees to a requested restriction of PHI may not use or disclose such PHI in violation of such restriction, except that if the individual who requested the restriction is in need of emergency treatment and the restricted information is needed to provide the emergency treatment, the HCC department may use the restricted information, or may disclose such information to a health care provider to provide such treatment to the individual. If restricted information is disclosed to a health care provider for emergency treatment, the HCC department must request that such health care provider not further use or disclose the information. A restriction agreed to by the HCC department is not effective to prevent uses or disclosures permitted or required under 45 C.F.R. §§164.502(a)(2)(ii), 164.510(a) or 164.512. HCC departments shall have a policy which describes how an individual can request a restriction on the use or disclosure of PHI and which also describes the process for terminating a restriction. An HCC department must document a restriction in accordance with 45 C.F.R. §164.530(j).

**G. Request for Alternative Communication Methods**

1. An HCC department must permit individuals to request, and must accommodate reasonable requests by individuals, to receive communications of PHI from the HCC department by alternative means or alternative locations. An HCC department may not require an explanation from the individual as to the basis for the request as a condition of providing communications on a confidential basis.
2. HCC departments shall have a policy which describes how an individual can request an alternative communication method and which describes any conditions on the provision of a reasonable accommodation, if applicable.

This Standard Practice shall not be construed as relieving departments of their responsibility to develop full and complete departmental policies, procedures, and practices necessary to expand and tailor this overall County Policy to the particular needs of their departments.

**LEAD DEPARTMENT**  
Human Resources