

## 4.05 Disclosure to Participants, Beneficiaries, and Others Acting on Their Behalf

This Section 4.05 describes the Plans procedure for disclosing PHI to Participants, their personal representatives, and family members and others acting on their behalf. Insurers and Business Associates may adopt similar procedures for the PHI they use or disclose for the Plan. Before disclosing any PHI, the Plan's Administrator will verify the identity of the person requesting the information (see Section 3.03).

### a. Participants

A Participant's own PHI may be disclosed to the Participant without Authorization.

### b. Personal Representatives

A personal representative will be treated as the Participant and the Participant's PHI may be disclosed to the personal representative without Authorization. The Plan's Administrator will make reasonable efforts to limit disclosures with respect to PHI to the information relevant to such personal representation. A person will be treated as a personal representative in accordance with the following table and applicable state law. However, see the discussion following this table for important restrictions on personal representative status.

Participant	Person requesting PHI	Personal representative?
Minor child	Parent or guardian*	Yes, but must provide proof of relationship.
Adult child	Parent or guardian	Yes, but only upon proof of legal authority (e.g., court order) or voluntary agreement (e.g., power of attorney).
Adult	Spouse or other adult	Yes, but only upon proof of legal authority (e.g., court order) or voluntary agreement (e.g., power of attorney).
Deceased	Executor or Administrator	Yes, but only upon proof of legal authority (e.g., provisions of a will or power of attorney).

\*This includes a person with the legal authority to make health care decisions.

### **Restrictions Regarding Minor Children**

The Plan generally will treat the parent (or guardian or other person acting in the place of a parent) of a minor child as the child's personal representative, in accordance with applicable state law. However, the parent will not be treated as the personal representative for PHI related to health care services received by the minor if:

- The minor lawfully obtained the services with the consent of someone other than the parent, who is authorized by law to give that consent (e.g., a court);
- The minor lawfully consented to and obtained the services and state law does not require the consent of anyone else; or
- The parent consents to a confidentiality agreement between the health care provider and the minor with respect to the services.

If a parent is not treated as a minor child's personal representative for a particular service, the parent may still receive access to the child's PHI under the individual right to inspect and copy PHI (Section 5.02) if the decision to provide access is made by a licensed health care professional, in the exercise of his or her professional judgment, and the decision is consistent with state law.

### **Restrictions Regarding Abuse or Endangerment**

The Plans may elect not to treat a person as a Participant's personal representative if, in the exercise of professional judgment, the Plans decide that it is not in the best interest of the Participant because of a reasonable belief that:

- The Participant has been or may become subject to abuse, domestic violence, or neglect by the person; or
- Treating the person as a personal representative could endanger the Participant.

A Participant may request that the Plan limit communications with a personal representative by submitting a request for Confidential Communications (see Section 5.05).

### ***c. Others Acting on a Participant's Behalf***

The HIPAA Privacy Rule provides discretion to disclose a Participant's PHI to any individual without Authorization if necessary for Payment or Health Care Operations. This can include disclosures of a Participant's PHI to the Participant's family members. In making these



disclosures, the Plan's Administrator will make reasonable efforts to limit disclosures to the Minimum Necessary to accomplish the intended purpose. *(State law could limit these disclosures.)*

In certain additional cases, PHI can be disclosed without Authorization to a Participant's family members, friends, and others who are not personal representatives, if any of the following conditions applies:

- Information describing the Participant's location, general condition, or death is provided to a family member or other person responsible for the Participant's care (including PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts);
- PHI is disclosed to a family member, close friend or other person identified by the Participant who is involved in the Participant's care or Payment for that care, and the Participant had the opportunity to agree or object to the disclosure; or
- PHI is disclosed to a family member or friends involved in the Participant's care and it is impossible (due to incapacity or emergency) to obtain the Participant's agreement.

#### **d. Citations**

45 CFR § 164.502(g)  
45 CFR § 164.510

## 4.06 Use and Disclosure of De-Identified Information and Data Use Agreements

Health information can be used without complying with the limits in this Manual if names, Social Security numbers and other data are removed so there is no reasonable basis to believe it can be used to identify a person. A Plan may choose to de-identify PHI and then use it without written Authorization from the persons to whom it pertains. A Plan can also remove most identifying data and disclose it without Authorization for selected purposes if the recipient agrees to protect the data through a Data Use Agreement.

Insurers and Business Associates acting on behalf of the Plan will adopt procedures for applying these De-identification rules and entering into Data Use Agreements. The Plans' procedures are described in this Section.

### a. De-Identified Information

To de-identify Plan information, the specific data in the following list will be removed. However, if the Plan's Administrator knows that the information could still be used to identify a person, it will be protected as PHI.

- Names;
- Social Security number;
- Specific dates such as dates of birth and death, and admission/discharge dates. *The Plan can use the year of the event, except for the birth years of persons over age eighty-nine (89);*
- Telephone numbers;
- Fax numbers;
- E-mail addresses;
- Medical record numbers;
- Health plan beneficiary number;
- Geographic identifiers smaller than a state, including street address, city, county, precinct, and zip code. *The first three (3) numbers of the zip code can be used if more than 20,000 people are in any combination of zip codes with the same first three (3) numbers;*
- Account numbers;
- Certificate/license numbers;
- Vehicle identifiers (serial numbers or license plate numbers);
- Device identifiers and serial numbers;
- Web Universal Resource Locators (URLs);
- Internet Protocol (IP) address numbers;
- Biometric identifiers (e.g., finger, iris, or voice prints);
- Full-face photographic and any comparable images; and
- Any other unique identifying numbers or characteristics or codes, including a particular subsidiaries, divisions or work locations.



The Plan can retain a code (or other method) for re-identifying a person's information in the future, if the identification mechanism will not be used or disclosed and cannot be translated so as to identify the person. If the health information is re-identified, the Plan will treat it as PHI subject to this Manual.

As an alternative to removing all the items above, a case-by-case decision can be made about how much data needs to be removed in order to de-identify information. To do so, a written statement and analysis must be obtained from an appropriate expert in statistics and information de-identification. The statement must conclude that the risk is very small the information could be used (alone or in combination with other information) to identify an individual.

### ***b. Data Use Agreements***

In limited circumstances, PHI may be disclosed without Authorization under a data use agreement. This type of disclosure is permitted upon receipt of a request for health information needed for research purposes or public health activities, if the request fails to meet the requirements in Section 10.10. The same procedures can be used to disclose PHI without Authorization for certain types of Health Care Operations not specifically described in Section 8.

For example, a data use agreement may be used to disclose information for research that has not been approved by a review board; for public health activities undertaken by private organizations instead of public health authorities; and for Health Care Operations by providers or other health plans that do not have a prior or current relationship with the subject of the PHI.

To disclose PHI without Authorization in these circumstances, the Plan must:

- Create a "limited data set" by removing most of the identifying data listed in the table in Section 4.06(a). If all of the data is removed, the information is de-identified and can be used or disclosed without restriction. Key dates (birth date, admission/discharge date, date of death) and certain geographic information, such as city and zip code, may be retained; and
- Receive assurances from the recipient of the data that it will protect the information through a data use agreement. The agreement must establish the permitted uses and disclosures of the information, limit who can use or receive it, and promise that the recipient will safeguard the information.

The Plan's Administrator will review each request for disclosure of information that may qualify for data use agreements on an individual basis, in consultation with the Privacy Official, to determine whether the requirements in the HIPAA Privacy Rule are satisfied.

***c. Citations***

45 CFR § 164.514

45 CFR § 164.502(d)

## **5. Individual Rights**

5.01 Overview

5.02 Inspect and Copy PHI

5.03 Amend PHI

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5.06 Accounting of Non-Routine Disclosures

## 5.01 Overview

The HIPAA Privacy Rule provides individuals with certain rights associated with their PHI that the Plan (and all other Covered Entities) must follow. These include the rights to:

- Access, inspect, and copy certain PHI within a Designated Record Set (see Section 5.02);
- Request the Amendment of their PHI in a Designated Record Set (see Section 5.03);
- Request restriction of the use and disclosure of their PHI (see Section 5.04);
- Request the use of alternative means or alternative locations for receiving communications of their PHI (see Section 5.05); and
- Request an accounting of PHI disclosures (see Section 5.06).

Section 10.03 identifies the contact persons for processing Participants' requests to exercise these rights.



## **5.02 Inspect and Copy PHI**

### ***a. Participant's Right***

A Participant has the right to access, inspect, and copy his or her PHI within a Designated Record Set for as long as the PHI is maintained in the Designated Record Set. The Plan must generally honor these rights, except in certain circumstances the Plan may deny the right to access. The Plan may provide a summary or explanation of the PHI instead of access or copies, if the Participant agrees in advance and pays any applicable fees.

A Designated Record Set is a group of records that the Plan maintains for enrollment, Payment, claims adjudication, case management or medical management, or that the Plan uses, in whole or in part, to make decisions about Participants. The Plan will require Business Associates to identify Designated Record Sets that they maintain and to make them available for inspection and copying. The Plan's Administrator maintains the following Designated Record Sets, which are available to be inspected or copied:

- Participant Files;
- Trust Appeal Files; and
- Subrogation Files.

### ***b. Processing a Request***

The Plan is responsible for receiving and processing requests for access, inspection, and copying of PHI maintained in Designated Record Sets. The Plan has assigned this responsibility to Inspection Contact (see Section 10.03). If the Plan does not maintain the PHI that is the subject of the Participant's request but knows where it is maintained, Inspection Contact will inform the Participant where to direct his or her request. The Plan will develop procedures with Business Associates to coordinate the inspection of Designated Record Sets in the Business Associates' custody.

Requests for access, inspection, and copying of PHI must be submitted on the Request for Access Form (Section 10.08(a)) and sent to Inspection Contact.

Inspection Contact will determine whether to approve or deny the request to access, inspect, or copy the PHI, in consultation with the Privacy Official, as needed.

Inspection Contact will respond to a Participant's request within thirty (30) days of the receipt

of the request. If the requested PHI is maintained offsite, Inspection Contact will respond within sixty (60) days of the request. If Inspection Contact is unable to respond within this timeframe, he or she will send the Participant written notice that the time period for reviewing the request will be extended for no longer than thirty (30) more days, along with the reasons for the delay and the date by which Inspection Contact expects to address the request.

### ***c. Accepting a Request to Access, Inspect, or Copy***

If Inspection Contact accepts the request, a copy of Form 10.08(a) indicating that the request has been accepted will be sent to the Participant and access will be provided within the thirty/sixty (30/60) day timeframe. A fee will be charged to the Participant for copying and mailing, based on the actual cost. Form 10.08(a) will inform the Participant of the fees in advance, and give the Participant an opportunity to withdraw the request if he or she does not agree to the fees.

### ***d. Denying a Request to Access, Inspect, or Copy (Where Participant has Right to Review)***

If Inspection Contact denies the request, a copy of Form 10.08(a) indicating that the request has been denied will be sent to the Participant within the thirty/sixty (30/60) day timeframe. Form 10.08(a) will indicate whether the Participant has the right to a review of the denial.

The Participant has the right to have the denial reviewed if Inspection Contact denies access to PHI for any of the following reasons:

- A licensed health care professional determines that the access is reasonably likely to endanger the life or physical safety of the Participant or another person;
- The PHI contains information about another person and a licensed health care professional determines that the access is reasonably likely to cause substantial harm to the other person; or
- The request is made by a personal representative, and a licensed health care professional determines that providing access to the personal representative is reasonably likely to cause substantial harm to the Participant or another person.

If Inspection Contact denies access on the basis of the risk of harm identified by a licensed health care professional, the Participant has the right to have the denial reviewed by a different licensed health care professional. Inspection Contact will promptly refer a request for review to a licensed health care professional who did not participate in the original denial decision. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access. Inspection Contact will provide or deny access in accordance with