

PRIVACY 26.0

USES AND DISCLOSURES NOT REQUIRING AUTHORIZATION OR OPPORTUNITY FOR PATIENT TO AGREE/OBJECT

Scope: All **workforce** members (employees and non-employees), including employed medical staff, management, and others who have direct or indirect **access** to patient **protected health information (PHI)** of any subsidiaries of Universal Health Services, Inc., including facilities and UHS of Delaware Inc. (collectively, “UHS”), including UHS **covered entities** (“Facilities”).

Purpose: Identifies and establishes guidelines for when **Facilities** may **use** and **disclose PHI** without a patient **authorization** or providing an opportunity for the patient to agree or object.

Definitions:

Terms not defined in this Policy or the *HIPAA Terms and Definitions* maintained by the UHS Compliance Office will have the meaning as defined in any related State or Federal privacy law including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”) at 45 CFR Part 160 and 164, Subparts A and E (“Privacy Regulations” or “Privacy Rule”) and Subparts A and C (“Security Regulations” or “Security Rule”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) privacy and security provisions of the American Recovery and Reinvestment Act (Stimulus Act) for Long Term Care, Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (“ARRA”), Title XIII and related regulations.

Policy:

A Facility may **use** or **disclose PHI** without the written **authorization** of the individual, or without an opportunity for the individual to agree or object, in the situations described in this Policy and using the procedure outlined below. State law may impose additional requirements and restrictions – Facilities will contact the UHS Legal Department if they have any questions regarding the state laws applicable to them.

Procedure:

As described below, Facilities may **use** or **disclose PHI** without the written **authorization** of the individual, or without an opportunity for the individual to agree or object, as described below.

Uses and Disclosures for Public Health Activities

Facilities may use or **disclose PHI** for public health activities and purposes to:

- A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability;
- At the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
- A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
- A person subject to the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which the person has responsibility, for the purpose of activities related to quality, safety or effectiveness;
- A person who may have been exposed to a communicable disease or may be at risk of contracting or spreading a disease or condition, if the Facility or public health authority is authorized by law to notify the person as necessary in the conduct of a public health intervention or investigation;
- An employer about a member of the employer's workforce if the Facility is a covered health care provider who provides health care to the individual at the request of the employer: (1) to conduct an evaluation relating to medical surveillance of the workplace, or (2) to evaluate whether the individual has a work-related illness or injury. The PHI disclosed must be limited to findings concerning a work-related illness or injury or a workplace-related medical surveillance. The employer must need the findings to comply with legal obligations to record the illness or injury to carry out responsibilities for workplace medical surveillance. The Facility must provide written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer, either by giving written notice when the health care is provided or if the health care is provided at the work site, by posting the notice in a prominent place where the health care is provided.
- A school about an individual who is a student or prospective student of the school if: (1) the PHI that is disclosed is limited to proof of immunization; (2) the school is required by state or other law to have such proof prior to admitting the individual; and (3) the Facility obtains and documents the agreement to the disclosure from the individual (if the student is an adult or emancipated minor) or, where the individual is an unemancipated minor, from a parent, guardian or other person acting *in loco parentis* of the individual. The agreement may be an oral agreement to disclose the immunization records. Documentation will make clear that agreement was obtained for the disclosure. For example, if the parent of an unemancipated minor called to request the Facility forward their child's immunization records to the school, a notation would be made in the child's medical record or elsewhere of the phone call. The agreement to permit disclosure of immunization records is considered effective until it is revoked.

Uses and Disclosures for Health Oversight Activities

A Facility 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 investigations; inspections; licensure or disciplinary actions; civil, administrative or criminal proceedings or actions; or other activities necessary for the appropriate oversight of:

- The health care system;
- Government benefit programs for which health information is relevant to beneficiary eligibility;
- Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- Entities subject to civil rights laws for which health information is necessary for determining compliance.

The health oversight activities described above do not include investigations or activities in which the individual is the subject of the investigation or activity, and the investigation or activity 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 when a patient's health is integral to the claim.

Disclosures Required by Law

Facilities may **use** or **disclose PHI** to the extent that the **use** or **disclosure** is required by law and complies with – and is limited by – the relevant requirements of the law. Specific requirements must also be met as described in the sections below for: (i) **disclosures** about victims of abuse, neglect or domestic violence; (ii) **disclosures** for judicial and administrative pleadings; and (iii) **disclosures** for law enforcement purposes.

Disclosures about victims of abuse, neglect or domestic violence

Facilities may **disclose PHI** for public health activities and purposes to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. For other victims of abuse, neglect or domestic violence, Facilities may **disclose PHI** about an individual whom the Facility reasonably believes to be a victim of abuse, neglect or domestic violence to a government authority, including a social service or protective services agency, that is authorized by law to receive such reports if:

- the **disclosure** is required by law and the **disclosure** complies with and is limited to only the relevant requirements of the law;
- the individual agrees to the **disclosure**;
- the **disclosure** is expressly authorized by a statute or regulation and the **disclosure** is necessary to prevent serious harm to the individual or other potential victims; or
- the **disclosure** is expressly authorized by a statute or regulation and the individual is unable to agree because of incapacity, and a law enforcement or other public official authorized to receive the report represents that: a) the **PHI** being sought is not intended to be **used** against the individual and b) that an immediate enforcement activity that depends upon the **disclosure** would materially and adversely affected by waiting until the individual is able to agree to the **disclosure**.

The Facility making a **disclosure** about victims of **abuse**, neglect or domestic violence under this Section of the Policy must promptly inform the individual that the report has or will be made, unless:

- Informing the individual would place him or her at risk of serious harm; or
- The Facility would be informing a personal representative who the Facility believes (using professional judgment) is responsible for the **abuse**, neglect or other injury, and the Facility determines (using professional judgment) that informing the representative would not be in the best interests of the individual.

Disclosures for Judicial and Administrative Proceedings

A Facility may **disclose PHI** in the course of any judicial or administrative proceeding in the following situations and with the limitations described:

1. Order of a Court or Administrative Tribunal

A Facility may **disclose PHI** in response to an order of the court or administrative tribunal, but the **disclosure** must be limited to the **PHI** expressly authorized by the order.

2. Subpoena, discovery request or other lawful process that is not accompanied by a court order

A Facility may **disclose** the **PHI** sought if the Facility has received a written statement and accompanying documentation from the party demonstrating that:

- The party has made a good faith attempt to provide written notice to the individual at his/her last known address;

- The notice included sufficient information about the litigation or proceeding to permit the individual to raise an objection to the court or tribunal; and
- The time for objections has elapsed and no objections were filed or all objections filed by the individual have been resolved and the disclosures are consistent with the resolution.

Alternatively, the Facility may disclose the PHI sought if the Facility has received a written statement and accompanying documentation from the party demonstrating that:

- 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 having jurisdiction; or
- The party seeking the PHI has requested a “qualified protective order” from the court or administrative tribunal.

“Qualified protective order” means an order of the court or administrative tribunal or a stipulation by the parties to the litigation or proceeding that:

- Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding; and
- Requires the PHI to be returned to the Facility or destroyed at the end of the litigation or proceeding.

Alternatively, the Facility may disclose PHI in response to subpoena, discovery request or other lawful process that is not accompanied by a court order if the Facility makes reasonable efforts to provide notice to the individual as described above or seeks a qualified protective order meeting the requirements above.

Disclosures for Law Enforcement Purposes

Facilities may disclose PHI to law enforcement officials for law enforcement purposes if and to the extent required by law. Depending on the state in which the Facility resides, for example, the required disclosures may include the reporting of certain types of wounds or other physical injuries. The requirements and limitations for disclosures made for law enforcement purposes are described in UHS Privacy 16.0 *Disclosures for Law Enforcement Purposes* and UHS Privacy 17.0 *Disclosure to Correctional Institutions or Law Enforcement with Lawful Custody*.

Uses and Disclosures to Avert a Serious Threat to Health or Safety

A Facility may, consistent with applicable law and ethical standards, use or disclose PHI if the Facility, in good faith, believes (based on actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority) that the use or disclosure:

- Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- Is necessary for law enforcement authorities to identify or apprehend an individual as set forth in UHS Privacy 16.0 *Disclosures for Law Enforcement Purposes*.

Uses and Disclosures of PHI of Decedents

With respect to deceased individuals, an authorized **personal representative** is an executor, administrator, or other person who has authority to act on behalf of the deceased individual or of the individual's estate and can authorize the disclosure of PHI as described in UHS Privacy 3.0 *Use and Disclosure Requiring Authorization*. The following uses and disclosures may be made without such authorization, subject to applicable state laws:

1. Disclosure to Family Members or Persons Involved with Care

A Facility may disclose to a family member or other persons who were involved in the care or payment for care of the decedent prior to death, the PHI of a deceased individual that is relevant to such person's involvement, unless the disclosure would be inconsistent with any prior expressed preference of the individual that is known to the Facility, as described in UHS Privacy 25.0 *Uses And Disclosures Requiring An Opportunity To Agree Or Object*.

2. Disclosures to and Use by Coroners and Medical Examiners

A Facility 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 authorized by law. A Facility functioning as a coroner or medical examiner may **use PHI** for these purposes.

3. Funeral Directors

A Facility may **disclose PHI** to funeral directors, consistent with the law, as necessary to carry out their duties. If necessary for the funeral directors to carry out their duties the Facility may **disclose** the **PHI** prior to, and in reasonable anticipation of, the individual's death.

4. Research Involving Decedents' PHI

Use or disclosure of PHI of decedents for research purposes is subject to the restrictions in UHS Privacy 14.0 *Use and Disclosure of PHI for Research and Reviews Preparatory to Research*.

Uses and Disclosures for Cadaveric Organ, Eye or Tissue Donation

A Facility 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.

Uses and Disclosures for Research Purposes

A Facility may **use** or **disclose PHI** for research purposes only as described and subject to the restrictions in UHS Privacy 14.0 *Use and Disclosure of PHI for Research and Reviews Preparatory to Research*.

Uses and Disclosures for Specialized Government Functions

A Facility may **use** and **disclose PHI** for the specialized government functions as described in and subject to the restrictions in UHS Privacy 9.0 *Use and Disclosure of Protected Health Information for Armed Services, Military and other Specialized Government Functions*, and UHS Privacy 17.0 *Disclosure to Correctional Institutions or Law Enforcement with Lawful Custody*.

Disclosures for Workers' Compensation

A facility may **disclose PHI** as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without fault.

State Law

State law may impose additional restrictions and requirements – Facilities will contact the UHS Legal Department if they have any questions regarding the state laws applicable to them.

References:

45 C.F.R. § 164.512

Related UHS Policies:

UHS Privacy 3.0 *Use and Disclosure Requiring Authorization*

UHS Privacy 9.0 *Use and Disclosure of Protected Health Information for Armed Services, Military and other Specialized Government Functions*,

UHS Privacy 14.0 *Use and Disclosure of PHI for Research and Reviews Preparatory to Research*

UHS Privacy 16.0 *Disclosures for Law Enforcement Purposes*

UHS Privacy 17.0 *Disclosure to Correctional Institutions or Law Enforcement with Lawful Custody*

UHS Privacy 25.0 *Uses And Disclosures Requiring An Opportunity To Agree Or Object*

**Revision Dates: 10-12-2017; 11-16-2015;
07-22-2013**

Implementation Date: 07-25-2011

Reviewed and Approved by:

UHS Compliance Committee