

PRIVACY 11.0

DISCLOSURE OF ALCOHOL AND SUBSTANCE/DRUG ABUSE RECORDS

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)** created, held or maintained by any subsidiaries of Universal Health Services, Inc., including facilities and UHS of Delaware Inc. (collectively, “UHS”), including UHS **covered entities** (“Facilities”).

Purpose: This Policy describes permissible **disclosures** of Alcohol and Substance/Drug Abuse Records.

Policy:

Information regarding participation in a Treatment Program or identifying a patient as a substance/drug or alcohol abuser will not be **disclosed** except as permitted by applicable law and described forth below.

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.

Alcohol Abuse means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Diagnosis means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse which is made for the purpose of treatment or referral for treatment.

Disclose or Disclosure for the purpose of this Policy means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Substance Abuse or Drug Abuse means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Treatment Program means:

- An individual or entity (other than a Facility) who holds itself out as providing, and provides, Alcohol or Substance/Drug Abuse diagnosis, treatment or referral for treatment; or
- An identified unit within a Facility which holds itself out as providing, and provides, Alcohol or Substance/Drug Abuse diagnosis, treatment or referral for treatment; or
- Medical personnel or other staff in a Facility whose primary function is the provision of Alcohol or Substance/Drug Abuse diagnosis, treatment or referral for treatment and who are identified as such providers.

Procedure:

Confidentiality of Alcohol and Substance/Drug Abuse Patient Records:

Facilities may not **disclose** to a person outside a Treatment Program that a patient participates in a Treatment Program, **disclose** patient records relating to Alcohol or Substance/Drug Abuse, or **disclose** any information identifying a patient as an alcohol or substance/drug abuser except as described below.

The restrictions on **disclosure** apply even where the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a **law enforcement official** or other official, has obtained a subpoena, or asserts any other justification for a **disclosure** which is not permitted by this Policy.

Disclosures may be made only if allowed by applicable state law, which may be stricter than federal law, *and* if:

- Consent is obtained in writing from the patient, unless the status of the patient fits into one of the four categories below in the section titled Consent in Other Situations (see Exhibit A for the basic federal requirements of the written consent - State law may impose stricter requirements);
- The **disclosure** is allowed by a court order; or
- The **disclosure** is made in accordance with this Policy.

Any attempt to subpoena, obtain by court order, or otherwise obtain Substance/Drug or Alcohol Abuse treatment records will be referred to the Facility Privacy Officer. For military personnel, Disclosure is also governed by Department of Defense regulations which may be stricter in certain circumstances. State laws may also impose stricter requirements. Consult the UHS Compliance Office or the UHS Legal Department if there are any questions regarding Department of Defense or state law privacy requirements.

Any permitted [disclosure](#) must be limited to that information which is necessary to carry out the purpose of the [disclosure](#). Each [disclosure](#) must be accompanied by the following statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

If a situation involving [disclosure](#) is not covered in this Policy or if the Facility has any questions regarding this Policy or applicable laws, the Facility will contact the UHS Compliance Office or the UHS Legal Department.

Consent in Other Situations:

1. Consent for Disclosure – Minors

Consent for [disclosure](#) of information regarding minors will vary under federal law depending on state law regarding parental consent. In certain circumstances, the minor's parents must give the consent; in other circumstances, only the minor may give consent and the parents are not permitted to be informed. The Facility will consult the UHS Legal Department if there are any questions regarding consent for [disclosure](#) by or on behalf of minors in the applicable state.

2. Consent for Disclosure – Incompetent Patients

When a patient who has been adjudicated as lacking the capacity (for any reason other than insufficient age) to manage his or her own affairs, written consent may be given by the guardian or other person authorized under State law to act on the patient's behalf.

3. Patient's Condition Prevents Knowing or Effective Action

For any period for which the Treatment Program director determines that a patient (other than a minor or one who has been adjudicated incompetent), suffers from a medical condition that

prevents knowing or effective action on his or her own behalf, the program director may consent on the patient's behalf for the sole purpose of obtaining payment for services from a third party payer.

4. Deceased Patients

Any **disclosure** of information identifying a deceased patient as an alcohol or substance/drug abuser is subject to the restrictions described in this Policy. Required consent must be in writing and may be given by an executor, administrator, or other personal representative appointed under applicable state law. If there is no appointment, the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

Disclosures without Consent or Court Order:

The following **disclosures** may be made without consent or a court order, unless restricted or prohibited by state law:

1. **Disclosure** may be made to medical personnel who have a need for information about a patient in a medical emergency (who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention). **Disclosures** may be made to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

The following must be documented in the medical records:

- a) The name of the medical personnel to whom **disclosure** was made and their affiliation with any health care facility;
 - b) The name of the individual making the **disclosure**;
 - c) The date and time of the **disclosure**; and
 - d) The nature of the emergency (or error, if the report was to FDA).
2. Patient identifying information may be disclosed for the purpose of conducting scientific **research** if the program director makes a determination that the recipient:
 - a) Is qualified to conduct the **research**; and

- b) Has a **research** protocol under which the patient identifying information:
 - (i) Will be maintained in a secure room, locked file cabinet, safe or other similar container when not in use, with written protocols to control access and use; and
 - (ii) Will not be redisclosed except as permitted under paragraph in this section; and
- c) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the **research** project has reviewed the protocol and determined that:
 - (i) The rights and welfare of patients will be adequately protected; and
 - (ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the **research**.

A person conducting **research** may disclose patient identifying information only back to the program from which that information was obtained and may not identify any individual patient in any report of that **research** or otherwise disclose patient identities.

- 3. Disclosure may be made for audit or program evaluation purposes being performed by:
 - a) an authorized government agency, by third party payers covering patients, or by quality improvement organizations performing a utilization or quality control review; or
 - b) any other person determined by the Treatment Program director to be qualified to conduct these activities; however the records may not be copied or removed unless the person receiving the records agrees in writing to keep the records in a secure room, locked file cabinet, safe or other similar container when not in use, with written protocols to control access and use; and destroys the records upon completion of the audit or evaluation.
- 4. Disclosure of patient identifying information may be made relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

Other Disclosures

Federal law and regulations on Alcohol and Substance Abuse/Drug information do not protect information about a crime committed by a patient either at the Treatment Program or against any person who works for the Treatment Program or about any threat to commit such a crime. This type of disclosure is covered by UHS Privacy 16.0 *Disclosure for Law Enforcement Purposes*

and UHS Privacy 26.0 *Uses and Disclosures Not Requiring Authorization or Opportunity to Agree/Object*.

The federal legal restriction on release of Alcohol and Substance/Drug Abuse records only applies to records of patients who are in a formal Alcohol or Substance/Drug abuse program, and not to general medical/surgical records which may contain information about Alcohol or Substance/Drug abuse.

Applicable state laws may impose additional requirements on these and other disclosures, which the Facilities will need to follow.

Acknowledging the Presence of Patients:

The presence of an identified patient in a Facility which is publicly identified as a place where only Alcohol or Substance/Drug Abuse diagnosis, treatment, or referral is provided may be acknowledged only if the patient's written consent is obtained or if an authorizing court order is entered. If the Facility is not publicly identified as only an Alcohol or Substance/Drug abuse diagnosis, treatment or referral facility, the presence of an identified patient in a facility may be acknowledged only if the patient is listed in a patient directory and has not opted out. (See UHS Privacy 12.0 *Patient Directories*) UHS behavioral health Facilities will not maintain a patient directory or acknowledge the presence of an identified patient in a Facility unless and to the extent required by law.

Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for Alcohol or Substance/Drug abuse. An inquiring party may be given a copy of the federal regulations and advised that they restrict the disclosure of Alcohol or Substance/Drug Abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of a particular identified patient.

References

42 C.F.R. 2.1 *et seq.*

Related Policies

UHS Privacy 12.0 *Patient Directories*

UHS Privacy 16.0 *Disclosure for Law Enforcement Purposes*

UHS Privacy 26.0 Uses and Disclosures Not Requiring Authorization or Opportunity to Agree/Object

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Reviewed and Approved by:

UHS Compliance Committee

Exhibit A. Minimum Elements of Consent Form for Drug and/or Alcohol Records

1. I (name of patient) o Request o Authorize:

2. (name or general designation of program which is to make the disclosure)

3. To disclose: (kind and amount of information to be disclosed)

4. To: (name or title of the person or organization to which disclosure is to be made)

5. For (purpose of the disclosure)

6. Date (on which this consent is signed)

7. Signature of patient

8. Signature of parent or guardian (where required)

9. Signature of person authorized to sign in lieu of the patient (where required)

10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition)