

POLICY SUBJECT:

Permissible Uses and Disclosures of Protected Health Information

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EFFECTIVE DATE: 06/19/13

*To be reviewed every three years
by Executive Management*

REVIEW BY: 12/09/18

POLICY

It is the policy of Catholic Health Initiatives (CHI) that the CHI National Office¹, any Direct Affiliates² and any Subsidiaries³ [collectively referred to as CHI Entity(ies)] comply with federal laws and regulations associated with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act (ARRA) of 2009, for Permissible Uses and Disclosures of Protected Health Information (PHI).

CHI Entities must abide by HIPAA's General Rules for Uses and Disclosures of PHI, including those for Treatment, Payment, or Health Care Operations, those requiring an opportunity for Individuals to agree or object, and those for which an authorization or opportunity to agree or object is not required.

DEFINITIONS

Refer to the Privacy Glossary for definitions of the terms used in this Policy.

PERMITTED USES AND DISCLOSURES

CHI Entities are permitted to Use or Disclose PHI as follows:

- To the Individual;
- For Treatment, payment, or healthcare operations purposes; and
- Incidental to a Use or Disclosure otherwise permitted under HIPAA, provided that Minimum Necessary requirements are met and appropriate administrative, technical, and physical safeguards are in place.

Disclosures for Treatment, Payment, and Healthcare Operations (TPO)

A CHI Entity may Use or Disclose PHI:

¹ The CHI National Office includes all locations where CHI National employees are located.

² A Direct Affiliate is any corporation of which CHI is the sole corporate member or sole shareholder.

³ A Subsidiary refers to *either* an organization, whether nonprofit or for-profit, in which a Direct Affiliate holds the power to appoint a majority of the voting members of the governing body of such organization *or* any organization in which a subsidiary holds such power.

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- For its own TPO;
- For Treatment activities of a Health Care Provider;
- To another Covered Entity or Health Care Provider for the Payment activities of the entity that receives the information.

The TPO provision does not apply when the Use or Disclosure:

- Requires an Authorization; or
- Involves genetic information, which Use by or Disclosure to a health plan is prohibited for underwriting purposes.

A CHI Entity may Disclose PHI to another Covered Entity for Health Care Operations activities of the entity that receives the information, if each entity (a) either has or had a relationship with the Individual who is the subject of the PHI being requested, (b) the PHI pertains to such relationship, **and** (c) the Disclosure is for:

- Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge (i.e., research) is not the primary purpose of any studies resulting from such activities;
- Patient safety activities;
- Population-based activities relating to improving health or reducing health care costs, protocol development, case management, and care coordination;
- Contacting Health Care Providers and Individuals with information about Treatment alternatives;
- Reviewing the competence or qualifications of health care professionals;
- Evaluating practitioner and provider performance;
- Health plan performance;
- Conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as Health Care Providers;
- Training of non-health care professionals;
- Accreditation, certification, licensing, or credentialing activities; or
- The purpose of health care fraud and abuse detection or compliance.

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Healthcare Operations of Organized Health Care Arrangements (OCHA)

When CHI Entities participate in an Organized Health Care Arrangement (OHCA), the CHI Entities may Disclose PHI about an Individual to another entity that participates in the OHCA for any Health Care Operations activities of the OHCA.

Consents for TPO Uses and Disclosures

CHI Entities **may** (but are not required to) obtain consent from the Individual to Use or Disclose PHI for TPO purposes; however, such consent shall not be effective if an Authorization is required or when another condition must be met for such Use or Disclosure to be permissible under HIPAA.

REQUIRED USES AND DISCLOSURES

CHI Entities are required to Disclose PHI as follows:

- To an Individual exercising his/her right to request Access to or an Accounting of Disclosures of his/her own PHI; and
- When required by the Secretary, United States Department of Health and Human Services, to investigate or determine the CHI Entity's compliance with HIPAA. Disclosures made under this provision must be included in the Accounting of Disclosures⁴.

PROHIBITED USES AND DISCLOSURES

CHI Entities are prohibited from Using or Disclose PHI as follows:

- Genetic information for underwriting purposes, except as allowed for specified health plans; and
- Sale of PHI⁵

⁴ See Privacy Policy No. 8 Accounting of Disclosures of Protected Health Information

⁵ See Attachment A Job Aid: Sale of PHI

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DISCLOSURES BY WHISTLEBLOWERS AND WORKFORCE MEMBER CRIME VICTIMS

Specific criteria must be met regarding Disclosures made by Whistleblowers and Workforce members who are victims of a crime.

Disclosures of PHI by Whistleblowers

The CHI Entity will not be considered to have violated HIPAA if a member of its Workforce or a Business Associate Discloses PHI, provided that:

- The Workforce member or Business Associate believes in good faith that the CHI Entity has engaged in conduct that is unlawful or otherwise violates professional, clinical, or other standards, or that the care, services, or conditions provided by the CHI Entity potentially endangers one or more patients, workers, the public, etc., **and**
- The Disclosure is to:
 - A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the CHI Entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the CHI Entity; or
 - 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 conduct that prompts the Whistleblower action.

Disclosures of PHI by Workforce Member Crime Victims

The CHI Entity will not be considered to have violated HIPAA if a Workforce member, who is the victim of a criminal act, Discloses PHI *to a law enforcement official*, provided that:

- The PHI Disclosed is about the suspected perpetrator of the criminal act; **and**
- The PHI Disclosed is limited to:
 - Name and address;
 - Date and place of birth;
 - Social Security number;

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- ABO blood type and RH factor;
- Type of injury;
- Date and time of treatment;
- Date and time of death, if applicable; and
- Description of distinguishing characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or mustache), scars, and tattoos.

Disclosures made under the HIPAA exceptions for Whistleblowers or Workforce member crime victims are required to be included in the Accounting of Disclosures.

USES AND DISCLOSURES REQUIRING AN OPPORTUNITY FOR THE INDIVIDUAL TO AGREE OR TO OBJECT

CHI Entities may Use or Disclose PHI for the following purposes, provided that the Individual is informed prior to the Use or Disclosure and has the opportunity to agree to or prohibit or restrict the Use or Disclosure. Such advanced notice from the CHI Entity and the agreement, prohibition, or restriction from the Individual may occur through oral conversation:

- Involvement in the Individual's care and notification purposes (See Attachment C - Job Aid: Judicial and Administrative Proceedings, also see Privacy Standard 10, *Verbal Disclosures to Family and Friends*);
- Facility Directory.

Hospital Facility Directories

A CHI Entity is permitted to maintain a directory of Individuals within its hospital facilities, provided the Individuals agree to be identified for this purpose. The Facility Directory contains the Individuals' names, general health care conditions and room numbers. The Facility Directory also includes the Individuals' religious affiliations that are only available to approved Clergy.

The CHI Entity shall provide the Individual with a copy of the Notice of Privacy Practices, which contains information about the contents and Use of an Individual's PHI in the Facility Directory and the CHI Entity's policy concerning Disclosure of Facility Directory information.

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An Individual is to be given the opportunity to object to the Use of his/her PHI in the Facility Directory and to restrict Disclosure of specific information. For example, the Individual may permit the Disclosure of his/her name and health care condition, but not religious affiliation. The CHI Entity shall comply with the Individual's oral or written agreement or objection to be included in the Facility Directory.

An Individual who chooses to opt out of the Facility Directory should be informed of the consequences of opting out of the directory (e.g., those who opt out may not receive flower deliveries).

Incapacity or Emergency Situations Involving Disclosures of Facility Directory Information

If an Individual cannot provide an oral or written request to agree to or restrict or exclude the Individual's PHI in the Facility Directory during normal registration due to the Individual's incapacity or an emergency treatment circumstance, **and** if the staff does not have knowledge of a prior objection by the Individual to Disclosure of PHI in the CHI Entity's Facility Directory, then designated professional staff (e.g., nursing staff) may determine, based on professional judgment, whether a Disclosure of some or all of the elements comprising the Facility Directory (i.e., name, general health condition, room number, and religious affiliation) is in the Individual's best interest.

Designated staff shall inform the Individual and provide an opportunity to object to the Disclosure of his/her PHI in the Facility Directory when it becomes practicable to do so, such as when the Individual has stabilized or otherwise becomes capable of decision-making.

Clergy

Part of CHI's Mission is "to nurture the healing ministry of the Church" by providing compassionate, quality health care services. CHI Entities employ spiritual care staff to meet Individuals' and families' spiritual needs. Local Clergy are encouraged to provide for their congregants' spiritual needs when they are at a CHI facility.

This Policy only applies to external Clergy and does not apply to CHI Entity Spiritual Care Staff.

Qualified and authorized members of the Clergy, as defined in this Policy, may have access to information in the Facility Directory provided they agree to and sign the Clergy Confidentiality Agreement. (See Attachment A: Clergy Confidentiality Agreement)

A CHI Entity will Disclose an Individual's Facility Directory information to Clergy unless the Individual or his/her Personal Representative objects to the Disclosure.

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USES AND DISCLOSURES FOR WHICH AN AUTHORIZATION OR OPPORTUNITY TO AGREE OR TO OBJECT IS NOT REQUIRED

Unless otherwise noted, all Uses and Disclosures for the following events or circumstances must be included in the Accounting of Disclosures. (See Privacy Policy No. 8, Accounting of Disclosures of Protected Health Information.)

CHI Entities may Use or Disclose PHI without an Authorization and without providing the opportunity for the Individual to agree or object when the following HIPAA standards are applicable:

Required by Law

PHI may be Used or Disclosed to the extent required by law, provided the Use or Disclosure is limited to the relevant requirements of such law.

Public Health Activities

- **Public Health Surveillance and Disease Reporting**

The CHI Entity 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, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.

The CHI Entity may also Use or Disclose PHI 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. Such activity may include cancer or tumor registries operated by a state or local health department of health, or as a freestanding, state-sponsored agency. A registry program that is a private sector entity may also be considered a public health authority if there is a specific grant of authority or contract with a governmental public health agency. In addition, state law may specifically require the reporting of cancer case information and, if applicable, the CHI Covered Entity shall follow such mandate.

- **Child Abuse or Neglect**

The CHI Entity may Use or Disclose PHI to a public health authority or other appropriate governmental authority authorized by law to receive reports of child abuse or neglect.

- **Communicable Diseases**

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The CHI Entity may Use or Disclose PHI for notifying and/or reporting to a public health authority or a potentially affected person that the person may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the CHI Entity is authorized by law to notify such affected person as necessary in the conduct of a public health intervention or investigation.

- **FDA-Regulated Products or Activities**

The CHI Entity may Use or Disclose PHI to 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 quality, safety, or effectiveness of such FDA-regulated product or activity, including:

- To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the se or labeling of a product), or biological product deviations;
- To track FDA-regulated products;
- To enable product recalls, repairs, or replacements, or look backs (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of look back); or
- To conduct post-marketing surveillance.

- **Disclosure of Student Immunizations to Schools**

The CHI Entity may Disclose proof of immunization to a school where state or other law requires it prior to admitting a student. Written Authorization is not required, but an agreement must still be obtained, which can be oral. The agreement must come from a parent, guardian, or other person acting *in loco parentis*, or directly from the Individual (adult or emancipated minor). Agreements for Disclosure of immunization records must be documented and should be obtained on a case-by-case basis as needed. The documentation must make clear that the agreement was obtained as permitted under this provision. Written or e-mail requests suffice as documentation of the agreement. Agreements obtained are considered effective until revoked by the parent, guardian, or other person acting *in loco parentis*, or by the Individual him/herself (adult or emancipated minor). The agreement is not to be treated the same as a HIPAA-compliant Authorization.

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- **Work-Related Illness, Injury, or Medical Surveillance**

A CHI Entity may Disclose PHI to an employer about an Individual who is a member of the employer's Workforce, if:

- The CHI Entity is a health care provider who provides health care to the Individual at the request of the 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;
- The PHI Disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
- The employer needs such findings in order to comply with its obligations under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury to carry out responsibilities for workplace medical surveillance; **and**
- The CHI Entity provides written notice to the Individual that PHI relating to the medical surveillance of the workplace and work-related illness and injuries is Disclosed to the employer by giving a copy of the notice to the Individual at the time the health care is provided, or if the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.

Victims of Abuse, Neglect, or Domestic Violence

Except for reports of child abuse or neglect (see section on Public Health Activities for Disclosures of PHI related to child abuse or neglect), the CHI Entity may Disclose PHI about an Individual believed to be the victim of abuse, neglect, or domestic violence, provided that:

- The Disclosure is to a governmental authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence;
- The Disclosure is required by law and the information is limited to the relevant requirements of such law; and
- The Individual agrees to the Disclosure. If the Individual does not agree to the Disclosure and the Disclosure is expressly authorized by law, statute, or regulation, then the following applies:
 - The CHI Entity, in the exercise of professional judgment, may Disclose the information to prevent serious harm to the Individual or other potential victims; or

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- If the Individual is incapacitated and cannot agree to the Disclosure, the CHI Entity can make the Disclosure if the law enforcement or other public official authorized to receive the report represents that the PHI is not intended to be used against the Individual and that an immediate enforcement activity that depends upon the Disclosure would be materially and adversely affected by waiting until the Individual is able to agree to the Disclosure.

Health Oversight Activities

The CHI Entity may Disclose PHI to a Health Oversight Agency for oversight activities authorized by law, including:

- Audits;
- Civil, administrative, or criminal investigations or actions;
- Inspections;
- Licensure or disciplinary 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.

Exceptions

Health Oversight Activities do not include investigations or other activities in which the Individual is the subject of the investigation/activity and such investigation/activity does not arise out of and is not directly related to:

- The receipt of healthcare;
- A claim for public benefits related to health; or
- Qualification for, or receipt of, public benefits or services when the Individual's health is integral to the claim for public benefits or services.

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Judicial and Administrative Proceedings

In general, Disclosures of PHI in the course of judicial or administrative proceedings (such as subpoenas, court orders, discovery requests, etc.) are governed by State Law. Thus, the CHI Entity should consult CHI Legal Services and relevant state-specific protocols for responding to such Disclosure requests. HIPAA requirements for subpoenas, court orders, and other judicial proceedings are outlined in Job Aid: Judicial and Administrative Proceedings. If there is a conflict between HIPAA requirements and State Law requirements, the statute that provides the most protection to the Individual who is the subject of the PHI will prevail. (See Attachment C - Job Aid: Judicial and Administrative Proceedings.)

Law Enforcement Purposes

See Attachment C - Job Aid: Judicial and Administrative Proceedings.

Decedents

An Individual's PHI is subject to HIPAA's Privacy, Security, and Breach Notification Rules for a period of 50 years following the death of the Individual. The CHI Entity may Disclose PHI about a deceased Individual in accordance with the following:

- To the Decedent's family member, friend, or other person known to have been involved in the Decedent's care or payment of care prior to the Individual's death, provided that the information Disclosed is relevant to the person's involvement and making such Disclosure to the person is not inconsistent with any prior expressed preference of the Decedent . *If the CHI Entity is aware of the Decedent's request to not share information with a specific person, or to not share specific information, then such request must be honored.* **Disclosures made under this section to family members, friends, or others involved in the care of an Individual are not required to be tracked in the Accounting of Disclosures.**
- To coroners and medical examiners for the purpose of identifying a Decedent, determining a cause of death, or other duties as authorized by law.
- To funeral directors consistent with applicable law, as necessary to carry out their duties with respect to the Decedent.
- To organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue donation and transplantation.
- To law enforcement officials if the CHI Entity has a reasonable suspicion that an Individual's death may have resulted from criminal conduct.
- To researchers conducting research on the Decedent if the CHI Entity obtains representation that the Use or Disclosure being sought is solely for research on the PHI of the Decedent, that the PHI is

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necessary for the research, and (upon request of the CHI Entity) documentation of the death of the Individual.

Cadaveric Organ, Eye, or Tissue Donation

See section on Decedents for Disclosures of PHI related to organ, eye, or tissue donation.

To Avert Serious Threat to Health or Safety

See Attachment D - Job Aid: Law Enforcement and To Avert Serious Threats.

Specialized Government Functions

See Attachment E - Job Aid: Specialized Government Functions.

Research

See Privacy Policy No. 4, *Use and Disclosure of PHI for Research*.

Workers' Compensation

PHI may be Disclosed as authorized by law 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 regard to fault.

Personal Representative

A CHI Entity recognizes a person who has authority to act on behalf of an Individual in making decisions related to health care (under applicable federal, state, and case law) as the Individual's Personal Representative for purposes of HIPAA and to obtain access to the Individual's PHI.

A CHI Entity recognizes the parent, guardian, or other person who has authority to act on behalf of a minor in making decisions related to health care (under applicable federal, state, and case law) as the minor's Personal Representative for purposes of HIPAA and to obtain access to the minor's PHI.

A CHI Entity may not Disclose PHI to the Personal Representative when:

- The CHI Entity has reasonable belief that the Individual or minor has been or may be subject to abuse, neglect, or domestic violence caused by the Personal Representative;

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- The CHI Entity has reasonable belief that the Individual or minor could be endangered if the CHI Entity treats the person as the Individual's Personal Representative; and
- The CHI Entity's professional staff decides that, in their professional judgment, it is not in the best interest of the Individual or minor to treat the person as the Individual's Personal Representative.

Minors

A CHI Entity recognizes a minor acting on his behalf and may release PHI directly to the minor if:

- The minor consents to the health care service and no other consent for the health care service is required by law (regardless of whether consent has already been obtained by the minor's parent or guardian or other person who has authority to act on behalf of the minor); and the minor has not requested that such person be treated as his/her Personal Representative.
- The minor may lawfully obtain the health care service without the consent of his/her parent or guardian (or other person who has authority to act on behalf of the minor), and the minor, a court, or another person authorized by law consents to such health care service; or
- The parent, guardian, or Personal Representative who has authority to act on behalf of the minor agrees to confidentiality between the minor and the CHI Entity. The confidentiality agreement is written and maintained in the minor's health or medical record and with the Health Information Management (HIM) Department.

ATTACHMENTS

- Attachment A - Clergy Confidentiality Agreement
- Attachment B – Job Aid: Sale of PHI
- Attachment C – Job Aid: Judicial and Administrative Proceedings
- Attachment D – Job Aid: Law Enforcement and To Avert Serious Threats
- Attachment E – Job Aid: Specialized Government Functions

AMENDED AND APPROVED

- **12/09/15**

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REFERENCES

- 45 CFR 164.502 – Uses and disclosures of PHI: general rules
- 45 CFR 164.506 – Uses and disclosures to carry out treatment, payment, or health care operations
- 45 CFR 164.510 – Uses and disclosures requiring an opportunity for the individual to agree or to object
- 45 CFR 164.512 – Uses and disclosures for which an authorization or opportunity to object is not required