

TITLE: REQUESTS FOR RESTRICTING USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

PURPOSE: To outline the process for receiving, evaluating, and responding to requests for restrictions on Harris Health System's use and/or disclosure of protected health information.

POLICY STATEMENT:

Harris Health System (Harris Health) will comply with federal and state privacy laws when responding to requests from patients to restrict the use and disclosure of their protected health information.

POLICY ELABORATION:

I. DEFINITIONS:

- A. **ACCEPTANCE:** To agree to assume the obligation to abide by the patient's or the patient's personal representative's requested restriction(s) of the use and/or disclosure of the patient's protected health information.
- B. **BUSINESS ASSOCIATE:** A person or entity that provides certain functions, activities, or services for, to, or on behalf of a covered entity (Harris Health) involving the use and/or disclosure of protected health information as further defined in the Health Information Portability and Accountability Act (HIPAA) regulations.
- C. **DISCLOSURE:** The release, transfer, provision of, access to, or divulging in any manner protected health information outside of Harris Health.
- D. **HEALTHCARE OPERATIONS:** Any of the following activities of Harris Health to the extent that the activities are covered functions of Harris Health:
 - 1. Conducting quality assessment and improvement activities, including:

Outcomes evaluation and development of clinical guidelines provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities.

2. Patient safety activities, including:
 - a. Efforts to improve patient safety and the quality of health care delivery;
 - b. The collection and analysis of patient safety work product;
 - c. The development and dissemination of information with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices;
 - d. The utilization of patient safety work product for the purposes of encouraging a culture of safety and of providing feedback and assistance to effectively minimize patient risk;
 - e. The maintenance of procedures to preserve confidentiality with respect to patient safety work product;
 - f. The provision of appropriate security measures with respect to patient safety work product;
 - g. The utilization of qualified staff; and
 - h. Activities related to the operation of a patient safety evaluation system and to the provision of feedback to participants in a patient safety evaluation system.
3. Population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives;
4. Reviewing the competence or qualifications of health care professionals, evaluating practitioner 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;
5. Except as prohibited under 45 C.F.R. §164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of 45 C.F.R. §164.514(g) are met, if applicable;

6. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
7. Business planning and development, such as conducting cost-management and planning related analyses related to managing and operating Harris Health, including formulary development and administration, development or improvement of methods of payment, or coverage policies; and
8. Business management and general administrative activities of Harris Health including, but not limited to:
 - a. Management activities relating to the implementation of and compliance with the requirements of the HIPAA Privacy Rule;
 - b. Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that PHI is not disclosed to such policy holder, plan sponsor, or customer;
 - c. Resolution of internal grievances;
 - d. The sale, transfer, merger, or consolidation of all or part of Harris Health with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and
 - e. Consistent with the applicable requirements of 45 C.F.R. §164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of Harris Health.

E. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (IIHI): Information that is a subset of health information, including demographic information collected from an individual, and:

1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - a. That identifies the individual; or

- b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

F. **LEGALLY AUTHORIZED REPRESENTATIVE (LAR):** An individual with legal standing to represent the interests of another (*e.g.*, parent of a minor patient) or with the authority to act on behalf of another (as by legal power of attorney when applicable, medical power of attorney when the patient is incapacitated, court order, advance directive, or the executor of a will).¹

G. **PAYMENT:** Payment includes:

1. Activities undertaken by:
 - a. A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and the provision of benefits under the health plan, excluding genetic information for underwriting purposes; or
 - b. A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and
2. The activities set forth above relate to the individual to whom health care is provided and include, but are not limited to:
 - a. Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts,) and adjudication or subrogation of health benefit claims;
 - b. Risk adjusting amounts due based on enrollee health status and demographic characteristics;
 - c. Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing;
 - d. Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

¹ Texas Health & Safety Code § 241.151.

- e. Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and
 - f. Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:
 - i. Name and address;
 - ii. Date of birth;
 - iii. Social Security number;
 - iv. Payment history;
 - v. Account number; and
 - vi. Name and address of health care provider and/or health plan.
- H. **PERSONAL REPRESENTATIVE:** A person with authority under the law to act on behalf of the patient. For purposes of this policy only, the term Personal Representative also includes a patient's Legally Authorized Representative, defined above.
- I. **PRIVACY OFFICER:** An individual designated by Harris Health who is responsible for the development and implementation of the privacy-related functions of Harris Health as further defined in Harris Health System Policy and Procedure 3.11.101 Privacy Officer, Roles and Responsibilities.
- J. **PROTECTED HEALTH INFORMATION (PHI):** Individually Identifiable Health Information that is created, received, transmitted or maintained by Harris Health in any form or medium that relates to the patient's health care condition, provision of health care, or payment for the provision of health care, as further defined in the HIPAA regulations. PHI includes, but is not limited to, the following identifiers:
- 1. Name;
 - 2. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

- a. The geographic unit formed by combining all zip codes with the same three initial digits contains more than twenty thousand (20,000) people; and
 - b. The initial three (3) digits of a zip code for all such geographic units containing twenty thousand (20,000) or fewer people is changed to 000.
3. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over eighty-nine (89) and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age ninety (90) or older;
 4. Telephone numbers;
 5. Fax numbers;
 6. Electronic mail addresses;
 7. Social security numbers;
 8. Medical record numbers;
 9. Health plan beneficiary numbers;
 10. Account numbers;
 11. Certificate/license numbers;
 12. Vehicle identifiers and serial numbers, including license plate numbers;
 13. Device identifiers and serial numbers;
 14. Web Universal Resource Locators (URLs);
 15. Internet Protocol (IP) address numbers;
 16. Biometric identifiers, including finger and voice prints;
 17. Full face photographic images and any comparable images; and
 18. Any other unique identifying number, characteristic, or code, except as permitted for re-identification purposes.
- K. **TREATMENT:** The provision, coordination, or management of health care and related services by one or more health care providers, including coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

L. **USE:** Regarding PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

M. **WORKFORCE:** Harris Health System Board of Trustees, employees, Medical Staff, trainees, contractors, volunteers, and vendors. Employees (permanent or temporary) include volunteers, trainees and other persons whose conduct, in the performance of work for Harris Health, is under the direct control of Harris Health, whether or not they are paid by Harris Health.²

II. REQUESTS FOR RESTRICTIONS ON USE AND DISCLOSURE OF PHI:

A. A patient, or the patient's Personal Representative, has the right to request that Harris Health place a restriction on Harris Health's Use or Disclosure of the patient's PHI when the Use or Disclosure pertains to:

1. Treatment, Payment, or Health Care Operations (TPO)³ unless the Use or Disclosure is required for emergency treatment; or
2. Disclosures to individuals involved in the patient's care or to individuals involved in the Payment for the patient's care⁴;
3. Disclosures to notify or assist in the notification of a family member, a Personal Representative of the patient, or another person responsible for the care of the patient of the patient's location, general condition, or death.⁵

B. Except as described in Section III below, Harris Health is not required to agree to a patient's requested restriction.⁶

C. If Harris Health agrees to a patient's requested restriction, Harris Health must abide by the restriction except Harris Health may Use and/or Disclose the restricted PHI:⁷

²Medical Staff members are not part of Harris Health's workforce as the term "Workforce" is defined under HIPAA, and Harris Health does not directly control members of the Medical Staff. However, Harris Health expects all members of the Medical Staff to follow and abide by Harris Health's policies and procedures.

³ 45 C.F.R. § 164.522(a)(1)(i).

⁴ 45 C.F.R. § 164.522(a)(1)(i)(B); 164.510(b)(1)(i).

⁵ 45 C.F.R. § 164.522(a)(1)(i)(B); 164.510(b)(1)(ii).

⁶ 45 C.F.R. § 164.522(a)(1)(i).

⁷ 45 C.F.R. § 164.522(a)(1)(iii).

1. When the patient requires emergency treatment and the restricted PHI is needed to provide such treatment.
 2. To another health care provider in order to provide emergency treatment to the patient.
- D. If Harris Health Discloses restricted PHI to another health care provider in accordance with Section C.2 above, Harris Health must request that the health care provider to whom the Disclosure was made not further Use or Disclose the restricted PHI.⁸

III. REQUIRED ACCEPTANCE OF REQUEST FOR RESTRICTION:

Harris Health must agree to a patient's or a patient's Personal Representative's request for a restriction on the Use or Disclosure of the patient's PHI when:⁹

1. The patient's or the patient's Personal Representative's requested restriction pertains to Disclosures of PHI to a health plan;
2. The Disclosure to the health plan is for the purpose of carrying out Payment or Health Care Operations and is not otherwise required by law; and
3. The PHI pertains solely to a health care item or service that the patient or another person, excluding the health plan, has paid for in full.

IV. TERMINATION OF RESTRICTIONS ON USE AND DISCLOSURE OF PHI:

Harris Health's Privacy Officer, or his or her designee, may terminate a previously approved restriction on Use and Disclosure of PHI if:¹⁰

1. The patient or the patient's Personal Representative agrees to or requests the termination in writing;
2. The patient or the patient's Personal Representative verbally agrees to the termination and the agreement is documented; or

⁸ 45 C.F.R. § 164.522(a)(1)(iv).

⁹ 45 C.F.R. § 164.522(a)(1)(vi).

¹⁰ 45 C.F.R. § 164.522(a)(2).

3. Except in situations as described in Section III above, Harris Health's Privacy Officer, or his or her designee, informs the patient of the termination, and the termination is only effective with respect to PHI created or received after Harris Health has informed the patient.
4. Harris Health's Privacy Officer, or his or her designee, must document the communication of the termination in the patient's medical and billing records.

V. PROCESSING REQUESTS FOR RESTRICTIONS ON USE AND DISCLOSURE OF PHI:

- A. The patient's or patient's Personal Representative's request for restrictions may be written or verbal. The request may be documented on Harris Health System Form 282020, Request for Restriction on Use and Disclosure of Patient Information, (See Attachment A) by either the patient or the patient's Personal Representative.
- B. Requests for restrictions on Use and Disclosure of PHI shall be submitted to the Harris Health's Privacy Officer, or his or her designee, for review and for determination as to whether to the requested restriction will be granted or denied.
- C. If Harris Health denies a request for restriction, Harris Health's Privacy Officer, or his/her designee, shall inform the patient of Harris Health's decision in writing.
- D. Harris Health must maintain the documentation of the restriction for six (6) years from the date the documentation was created or the date on which it was last effective, whichever is later.¹¹
- E. Harris Health's Privacy Officer, or his/her designee, shall document any accepted restrictions and terminated restrictions in the patient's electronic medical record.

¹¹ 45 C.F.R. § 164.530(j)(2).



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Last Review Date: 09/08/2020
Due For Review: 09/08/2023

REFERENCES/BIBLIOGRAPHY:

45 C.F.R. § 164.522.

45 C.F.R. § 164.510.

45 C.F.R. § 164.530(j).

Harris Health System Policy and Procedures 6.27 Workplace Violence

Harris Health System Policy and Procedures 3.11.101 Privacy Officer, Roles and Responsibilities

ATTACHMENT:

Harris Health System Form 282020 – Request for Restriction on Use and Disclosure of Patient Information

OFFICE OF PRIMARY RESPONSIBILITY:

Harris Health System Office of Corporate Compliance

REVIEW/REVISION HISTORY:

| Effective Date | Version # (If Applicable) | Review/ Revision Date (Indicate Reviewed or Revised) | Approved by: |
|----------------|------------------------------|---|--|
| | 1.0 | Approved 06/26/2003 | HCHD President and CEO |
| 06/10/2005 | | 06/10/2005 | HCHD Board of Managers Board Motion No: 03.6-270 |
| | 2.0 | Revised/Approved 12/14/2010 | HCHD Operations Policy Committee |
| | 3.0 | Revised/Approved 08/13/2013 | Operations Policy Committee |
| | | Approved 09/26/2013 | Harris Health System Board of Managers (Motion No. 13.09-122) |
| | 4.0 | Revised/Approved 07/27/2017 | Structure and Organizational Standards Committee |
| | | Revised/Approved 09/08/2020 | Structure and Organizational Standards Committee |

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ATTACHMENT A REQUEST FOR RESTRICTION ON USE AND DISCLOSURE OR PROTECTED HEALTH INFORMATION

See Harris Health System Document Control Center to access Form 282020