

TITLE: MINIMUM NECESSARY STANDARD FOR REQUEST, USE, OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

PURPOSE: To describe the requirements of requesting, using, or disclosing only the minimum necessary protected health information pursuant to the Health Insurance Portability and Accountability Act.

POLICY STATEMENT:

Pursuant to federal and state laws, protected health information must only be requested, used, or disclosed when it is required to accomplish a legitimate job function for legitimate business purposes. Therefore, when requesting, using, or disclosing protected health information, Harris Health System (Harris Health) workforce shall limit the protected health information requested, used, or disclosed to the minimum necessary required.

POLICY ELABORATIONS:

I. DEFINITIONS:

- A. **BUSINESS ASSOCIATE:** A person or entity that provides certain functions, activities, or services for, to or on behalf of a covered entity involving the use and or disclosure of protected health information as further defined in the Health Insurance Portability and Accountability Act (HIPAA) regulations.
- B. **COVERED ENTITY:** A health plan, a health care clearinghouse, or a health care provider (Harris Health) that electronically transmits health information covered by the HIPAA Regulations. Harris Health is a Covered Entity.
- C. **DISCLOSURE:** The release, transfer, provision of, access to, or divulging in any manner protected health information outside of Harris Health.
- D. **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 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.

- E. **INFORMATION SECURITY OFFICER:** An individual responsible for the management and supervision of the use of security measures to protect data and the conduct of personnel in relation to the protection of data as further defined in Harris Health Policy 3.11.801 Security Official Roles and Responsibilities.

- 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. **LIMITED DATA SET:** PHI that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
 1. Names;
 2. Postal address information, other than town or city, state, and zip code;
 3. Telephone numbers;
 4. Fax numbers;
 5. Electronic mail addresses;
 6. Social security numbers;
 7. Medical records numbers;
 8. Health plan beneficiary numbers;
 9. Account numbers;
 10. Certificate/license numbers;
 11. Vehicle identifiers and serial numbers, including license plate numbers;
 12. Device identifiers and serial numbers;

¹ Texas Health & Safety Code § 241.151.

13. Web Universal Resource Locators (URLs);
 14. Internet Protocol (IP) address numbers;
 15. Biometric identifiers, including finger and voice prints; and
 16. Full face photographic images and any comparable images.
- H. **MEDICAL STAFF:** All physicians, dentists, podiatrists and oral-maxillofacial surgeons who are appointed to the Medical Staff and who either (i) hold a faculty appointment at Baylor College of Medicine and/or The University of Texas Health Science Center at Houston or (ii) are employed by Harris Health System to provide health care services at designated Harris Health System Facilities. Medical school faculty appointment status is not required for locum tenens or Medical Staff employed by Harris Health System.
- I. **MINIMUM NECESSARY:** The minimum PHI required to accomplish the intended purpose of the request, Use, or Disclosure of PHI when:
1. A Workforce member Uses PHI for a job specific function;
 2. Harris Health Discloses PHI to an outside person or entity; or
 3. Harris Health requests PHI from an outside person or entity.
- J. **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.
- K. **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 Policy and Procedure 3.11.101 Privacy Officer, Roles and Responsibilities.
- L. **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:

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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 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.

M. **RECORD CUSTODIAN:** An individual designated by Harris Health to be responsible for the safekeeping, maintenance, and release of PHI.

- N. **USE:** Regarding PHI, the sharing, employment, application, utilization, examination or analysis of such information within an entity that maintains such information.
- O. **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. MINIMUM NECESSARY REQUEST, USE, OR DISCLOSURE OF PHI BY WORKFORCE:

- A. Minimum Necessary access to PHI by Harris Health's Workforce is regulated by role-based access that considers:
1. The persons or job classifications in each department who need access to PHI to carry out their duties;
 2. Each category or categories of PHI for which access is needed for each job classification; and
 3. Any conditions appropriate to such access for each job classification.³
- B. Request, Use, and Disclosure of PHI by Harris Health's Workforce must be limited to the Minimum Necessary to carry out the Workforce members' job role and functions.⁴
- C. Harris Health Workforce members may access a patient's entire medical record if necessary for treatment of the patient.⁵

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. § 164.514(d)(2).

⁴ 45 C.F.R. § 164.502(b).

⁵ 45 C.F.R. § 164.502(b)(2).

- D. Harris Health Workforce members accessing an entire medical record for purposes other than treatment must provide specific justification to the Harris Health Privacy Officer or designee.
- E. Harris Health department directors are responsible for ensuring that Workforce members within their department only request, Use or Disclose the Minimum Necessary PHI to carry out his or her job role or function.
- F. Harris Health's Privacy Officer or designee, in collaboration with department directors, will review and monitor PHI access by Harris Health's Workforce. The Privacy Officer or designee will modify or update appropriate access to PHI by a Workforce member or a job class of Workforce members due to:
 - 1. Changes in the role or responsibilities of the Workforce member or group of Workforce members;
 - 2. Termination of employment of Workforce member; or
 - 3. Changes in technology or methodology used for limiting access to PHI.

III. MINIMUM NECESSARY DISCLOSURE OF PHI TO OUTSIDE INDIVIDUALS OR ENTITIES:

- A. Harris Health may not Disclose an entire medical record to an individual or entity outside of Harris Health unless:
 - 1. Authorized to do so in writing by the patient or the patient's Personal Representative; or
 - 2. The requesting individual or entity offers documentation of the specific justification to Harris Health's Privacy Officer or designee for Disclosure of the entire medical record.
- B. The Record Custodian is responsible for applying the Minimum Necessary standard to Disclosure of PHI to individuals or entities outside of Harris Health.
- C. Routine Disclosure of PHI to Outside Individuals or Entities:

1. For Disclosures of PHI that Harris Health makes on a routine basis to individuals and entities outside of Harris Health, Harris Health must implement criteria or protocols that limit the Disclosures of PHI to the Minimum Necessary to achieve the purpose of the Disclosure.⁶
2. The Record Custodian, in collaboration with the Privacy Officer or designee, shall:
 - a. Determine which Disclosures of PHI are considered to be routine and recurrent;
 - b. Establish criteria or protocols, and set forth the Minimum Necessary PHI for each type of routine and recurrent Disclosure. Consideration should be given in defining:
 - i. The data elements or record sets to be Disclosed; and
 - ii. The frequency and timeframe of the records to be Disclosed.

Example: Routine Disclosures of PHI to third-party payers for health care services will include an abstract of the medical record containing the Fact Sheet, Discharge Summary, History & Physical Examination, Consultation Reports, Operative Reports, and Pathology Reports.

- c. Supervise designated Workforce members who receive, process, and document routine and recurrent Disclosures of PHI; and
 - d. Document the PHI Disclosed.
- D. Non-Routine Disclosures of PHI to Outside Individuals or Entities:
1. For non-routine Disclosures of PHI to individuals or entities outside of Harris Health, Harris Health must develop criteria to limit Disclosure of PHI to the Minimum Necessary required and review requests for Disclosure on a case-by-case basis in accordance with such criteria.⁷
 2. The Record Custodian, in collaboration with the Privacy Officer or designee, shall:

⁶ 45 C.F.R. § 164.514(d)(3)(i).

⁷ 45 C.F.R. § 164.514(d)(3)(ii).

- a. Determine what to include in each type of non-routine Disclosure of PHI in order to limit the PHI Disclosed to the Minimum Necessary;
 - b. Review each request for Disclosure of PHI on a case-by-case basis in accordance with established criteria described above;
 - c. Approve or reject non-routine Disclosures of PHI;
 - d. Supervise designated Workforce members who receive, process, and document non-routine Disclosures of PHI; and
 - e. Document PHI Disclosed.
3. The Record Custodian may rely on the judgment of the individual or entity requesting the PHI to be the Minimum Necessary PHI needed if the request for Disclosure is made by⁸:
- a. Another Covered Entity (See Section IV);
 - b. A public official or agency for a Disclosure permitted without Authorization and if the public official or agency represents that the information requested is the Minimum Necessary for the stated purpose;
 - c. A Harris Health Workforce member or Business Associate who represents that the requested PHI is the Minimum Necessary to provide services on behalf of Harris Health; or
 - d. A researcher with appropriate documentation for research requests.

Note: Harris Health, in its sole discretion, may make its own Minimum Necessary determination for all Disclosures of PHI.

IV. REQUESTS FOR PHI TO AND FROM OTHER COVERED ENTITIES:

A. Requests for Entire Medical Record

When requesting PHI from another Covered Entity, Harris Health must limit the request to the Minimum Necessary to accomplish the purpose of the request. Harris Health may request an entire medical record from another Covered Entity

⁸ 45 C.F.R. § 164.514(d)(3)(iii).

only if the entire medical record is specifically justified as the PHI reasonably necessary to accomplish the purpose of the request.⁹

B. Routine and Recurrent Request for PHI to Other Covered Entities:

1. For requests of PHI Harris Health makes on a routine and recurrent basis from other Covered Entities, Harris Health must implement policies and procedures that limit PHI requested to the Minimum Necessary to achieve the purpose of the request.¹⁰
2. The Record Custodian, in collaboration with the Privacy Officer or designee, shall:
 - a. Determine which requests for PHI are considered routine and recurrent;
 - b. Establish criteria or protocols setting forth the Minimum Necessary PHI for each type of routine and recurrent request;
 - c. Supervise designated Workforce members who process and document routine and recurrent requests of PHI from other Covered Entities; and
 - d. Maintain documentation of non-routine requests for PHI.

C. Non-Routine Requests of PHI from Other Covered Entities¹¹:

For non-routine requests of PHI from other Covered Entities, the Record Custodian or his/her designee shall:

1. Establish criteria or protocols setting forth the Minimum Necessary PHI for each type of non-routine request;
2. Review each request for PHI on a case-by-case basis in accordance with the established criteria and protocols;
3. Approve or reject non-routine requests for PHI;
4. Supervise designated Workforce members who process and document routine and non-routine requests of PHI from and other Covered Entities; and

⁹ 45 C.F.R. § 164.514(d)(5).

¹⁰ 45 C.F.R. § 164.514(d)(4)(ii).

¹¹ 45 C.F.R. § 164.514(d)(4)(iii).

5. Maintain documentation of non-routine requests for PHI.

V. WHEN MINIMUM NECESSARY STANDARD DOES NOT APPLY:

The Minimum Necessary Standard does not apply in the following situations¹²:

- A. Disclosures to or requests by a health care provider for treatment purposes;
- B. Use or Disclosures to the patient who is the subject of the PHI;
- C. Uses or Disclosures made pursuant to a valid authorization as described in Harris Health Policy and Procedure 3.11.300 Authorization for Use and Disclosure of Protected Health Information.
- D. Disclosures made to the Secretary of the U.S. Department of Health and Human Services when the Disclosure is required pursuant to HIPAA for enforcement purposes;
- E. Uses and Disclosures as otherwise required by HIPAA; and
- F. Uses and Disclosures required by law as described in Harris Health Policy and Procedure 3.11.306 Permitted Use and Disclosure of Protected Health Information without a Patient's Authorization.

VI. SPECIAL CONSIDERATIONS:

- A. Payment and Health Care Operations:

The Minimum Necessary standard applies to Uses and Disclosures of and requests for PHI for purposes of payment and health care operations.¹³

- B. Disclosures to Friends and Relatives:

¹² 45 C.F.R. § 164.502(b)(2).

¹³ 45 C.F.R. § 164.502(b).

Harris Health may Disclose PHI to friends and relatives of the patient if:

1. The patient agrees that PHI may be Disclosed;
2. The patient has had an opportunity to object to the Disclosure and does not; or
3. It is reasonable to infer that the patient would not object, such as when a patient brings a spouse into the room when treatment is being discussed, or a friend brings a patient to the emergency room.

Note: In situations where oral agreement of the patient cannot practically be obtained, the Minimum Necessary standard applies and only the Minimum Necessary PHI may be Disclosed to the friend or relative in order for the friend or relative to provide assistance to the patient. (See Harris Health Policy and Procedure 3.11.203 Use and Disclosure of Protected Health Information to Persons Involved in the Patient's Care and for Disaster Relief Purposes.)

C. Members of the Medical Staff:

See the Harris Health Medical Staff Bylaws and Rules and Regulations governing access to PHI by members of Harris Health's Medical Staff. Minimum Necessary applies to administrative uses not for treatment purposes.¹⁴

D. Incidental Uses and Disclosures:

An incidental Use or Disclosure of PHI is permitted only to the extent that Harris Health applies reasonable safeguards and implements the Minimum Necessary standard.¹⁵ Examples of reasonable safeguards include but are not limited to:

1. Speaking quietly;
2. Avoiding using patients' names in public areas;
3. Segregating patients from others when possible;
4. Locking or controlling access to areas that contain patient information; and
5. Controlling access to view computer screens.

¹⁴ 45 C.F.R. § 164.502(b).

¹⁵ 45 C.F.R. § 164.502(a)(1)(iii).

E. Oral Communications:

HIPAA privacy regulations apply to oral communications, paper, and electronic records. Harris Health's Workforce must make reasonable efforts to not discuss PHI to individuals not directly involved in the patient's care.

F. Visual Communications:

White-boards, bulletin boards, and other visual postings are often used to communicate the location and/or status of patients in treatment areas such as emergency rooms, operating rooms, and labor and delivery units. The Minimum Necessary standard applies to the use of these postings. Department directors in treatment areas, in collaboration with the Privacy Officer or designee, are responsible for determining which reasonable precautions should be taken to avoid inadvertent or unnecessary Disclosures of PHI. These determinations will be documented in departmental policies, procedures and guidelines.

G. Monitoring compliance with the Minimum Necessary Standard:

Harris Health's Privacy Officer or designee and Security Officer are responsible for monitoring compliance with the Minimum Necessary requirements, standards and designations and for assuring corrective action where indicated. Department directors will monitor their staff's compliance with the Minimum Necessary standards as part of an ongoing review of departmental operations and will take corrective actions when indicated.

H. Standard Electronic Transactions:

The Minimum Necessary standard does not apply to the required and situational required data elements in the standard electronic transactions provided for in the HIPAA regulations. However, the Minimum Necessary standard applies to the optional data elements.¹⁶¹⁷

¹⁶ 45 CFR 164.502(b)(2)(vi).

¹⁷ U.S. Department of Health & Human Services, Office for Civil Rights, *Doesn't the HIPAA Privacy Rule minimum necessary standard conflict with the HIPAA transaction standards?*, Dec. 19, 2002, available at <https://www.hhs.gov/hipaa/for-professionals/faq/212/does-minimum-necessary-standard-conflict-with-hipaa-transaction-standards/index.html> (last visited June 26, 2020).

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I. Business Associates:

The Use or Disclosure of PHI by Business Associates shall be consistent with the Minimum Necessary standard.

REFERENCES/BIBLIOGRAPHY:

45 C.F.R. §§ 164.502, 164.514

U.S. Department of Health & Human Services, Office for Civil Rights, *Doesn't the HIPAA Privacy Rule minimum necessary standard conflict with the HIPAA transaction standards?*, Dec. 19, 2002, available at <https://www.hhs.gov/hipaa/for-professionals/faq/212/does-minimum-necessary-standard-conflict-with-hipaa-transaction-standards/index.html> (last visited June 26, 2020).

Harris Health System Policy and Procedures 3.11.105 Use and Disclosure of Protected Health Information for Purposes Other Than Treatment, Payment and Health Care Operations

Harris Health System Policy and Procedures 3.11.203 Use and Disclosure of Protected Health Information to Persons Involved in the Patient's Care and for Notification and Disaster Relief

Harris Health System Policy and Procedures 3.11.300 Use and Disclosure of Protected Health Information for Purposes Other Than Treatment, Payment and Health Care Operations

Harris Health System Policy and Procedures 3.11.304 Accounting of Disclosures of Protected Health Information

Harris Health System Policy and Procedures 3.11.306 Permitted Use and Disclosure of Protected Health Information without a Patients Authorization

Harris Health System Policy and Procedures 3.11.801 Security Official Roles and Responsibilities

Harris Health System Policy and Procedures Policy 3.05 Research



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OFFICE OF PRIMARY RESPONSIBILITY:

Harris Health System Office of Corporate Compliance

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