PATIENT PRIVACY: USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION POLICY

PURPOSE

The purpose of this policy is to establish guidelines to facilitate The University of Texas MD Anderson Cancer Center’s (MD Anderson’s) compliance with federal statutory and regulatory requirements that require health care organizations to define how Protected Health Information (PHI) will be Used, Disclosed, and requested.

POLICY STATEMENT

MD Anderson is committed to protecting the privacy and security of PHI. Accordingly, when using or Disclosing PHI, or when requesting PHI from another Covered Entity, unless otherwise excepted, MD Anderson will make reasonable efforts to limit Uses and Disclosures of PHI to the minimum necessary to accomplish the intended purpose(s) of the Use, Disclosure, or request, and to follow all other HIPAA and state privacy requirements with respect to such Use, Disclosure or request.

SCOPE

This policy applies to all MD Anderson Workforce Members and any other persons who Use, Disclose, or request PHI on behalf of MD Anderson.

Compliance with this policy is the responsibility of all faculty, trainees/students, and other members of MD Anderson’s workforce.

TARGET AUDIENCE

The target audience for this policy includes, but is not limited to, all MD Anderson Workforce Members and any other persons who Use, Disclose, or request PHI on behalf of MD Anderson.

DEFINITIONS

Authorization: A written document signed by the individual (or the individual’s legally authorized representative) granting permission for the individual’s PHI to be used or disclosed for specified purposes and to specified parties. Authorizations are also referred to as “HIPAA Authorizations” or “Authorizations for Use and Disclosure of PHI.”

Business Associate: See HIPAA Definitions Plan.

Covered Entity: See HIPAA Definitions Plan.

Disclosure: See HIPAA Definitions Plan.
Health Care Operations: See HIPAA Definitions Plan.

Health Care Providers: Individuals or other Covered Entities who are responsible for direct patient care or ancillary services provided to the patient. For example, Health Care Providers include the following persons or entities when involved in such direct patient care or ancillary services:

- Staff Physicians.
- GME Residents and Fellows.
- Dentists, Podiatrists, and Medical Physicists.
- PhDs in the Division of Cancer Prevention.
- Registered Nurses, Advanced Practice Nurses, and Physician Assistants.
- Psychologists, Speech Pathologists, and Physical/Occupational Therapists.
- Pharmacists, Perfusionists, Respiratory Therapists, and Dieticians.
- Technicians, Social Workers, and Chaplains.
- Nursing Assistants.
- Students and trainees under direct supervision.
- Hospitals, laboratories, clinics, skilled nursing, rehabilitation and other healthcare facilities.
- Medical groups and other professional groups providing health care to patients.

Payment: See HIPAA Definitions Plan.

Protected Health Information (PHI): See HIPAA Definitions Plan.

Treatment: See HIPAA Definitions Plan.

Use: See HIPAA Definitions Plan.

Workforce Member: See HIPAA Definitions Plan.

PROCEDURE

1.0 General Rule for the Use and Disclosure of PHI

Protected Health Information (PHI) will only be Used or Disclosed for the purposes of Treatment, Payment, or Health Care Operations, unless otherwise permitted or required by law.

2.0 Use and Disclosure of PHI Pursuant to an Authorization

2.1 Generally, the Use and Disclosure of PHI is permitted without the individual’s written Authorization when the purpose for the Use of Disclosure is Treatment, Payment, or Health Care Operations. Additional exceptions to the written Authorization requirement are described in the Patient Privacy: Authorization for the Use and Disclosure of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0396).

2.2 Blank Authorization forms approved by the Institutional Compliance Office (ICO) are available in the institutional forms repository. To be valid, an Authorization must contain all of the elements listed in Section 4.0 of MD Anderson’s Patient Privacy: Authorization for the Use and Disclosure of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0396). The Authorization forms in the forms repository are all valid; they have different names because they have been tailored to permit easy use in common situations (i.e., Release of Information, Media Use, Scientific Publications, Photographs). For questions about when or how to obtain an Authorization or to request creation of a tailored Authorization, contact the Privacy Compliance Team in the ICO at 713-745-6636.
3.0 Minimum Necessary Standard

3.1 In general, the Minimum Necessary Standard limits the PHI Used or Disclosed to the minimum (least) amount necessary to achieve the intended purpose. This includes limiting the type, amount, or scope of PHI, but also includes limiting the number of people who access or view the PHI.

3.2 The Minimum Necessary Standard applies to all permitted Uses and Disclosures of PHI, including Uses and Disclosures by and to MD Anderson’s Business Associates.

3.3 The Minimum Necessary Standard, however, does not apply to the following:
   A. Treatment purposes, including Disclosures to or requests by, a Health Care Provider for Treatment purposes;
   B. Uses or Disclosures to the individual who is the subject of the information;
   C. Uses or Disclosures made pursuant to an individual’s HIPAA Authorization;
   D. Disclosures to the Secretary of Health and Human Services;
   E. Uses or Disclosures required by law; and
   F. Uses and Disclosures required for compliance with HIPAA.

3.4 The Minimum Necessary Standard applies to voice-mail messages left for patients. When leaving a voice-mail message, please only state your name, whom you are calling for, where you are calling from, and a telephone number where you may be reached.

4.0 Access to and Use of PHI by Workforce Members

4.1 Members of MD Anderson’s Workforce may gain access to PHI only for permitted or required purposes. Use of PHI will be governed by principles of role-based access (i.e., only those persons whose job duties require them to Use PHI will be permitted to access the information).

4.2 Departments/managers are responsible for identifying their personnel’s need for access to PHI based on the Workforce Member’s role. Additionally, departments/managers are responsible for periodically reviewing this access, and altering or terminating it, as appropriate. (See the Information Security Access Request Page (ISARP) User Manual for more information on how access to information is granted.)

5.0 Disclosures of PHI

5.1 All requests for Disclosure of PHI should be forwarded to the appropriate department for processing. (See Confidentiality Policy (UTMDACC Institutional Policy # ADM0264).) For example, patients requesting copies of medical records should be referred to the HIM Release of Information offices in the Main Building or the Mays Clinic.

5.2 If a request for Disclosure of PHI is made by another Health Care Provider for Treatment purposes, the Minimum Necessary Standard does not apply. In such circumstances, the PHI that is being requested should be released as quickly as possible, in accordance with MD Anderson’s Confidentiality Policy UTMDACC Institutional Policy # ADM0264).
5.3 Departments responsible for processing requests for Disclosure of PHI must review each request and determine:

A. If the stated purpose of the request is for a prohibited Disclosure.
   - In the event that the Disclosure is prohibited, the request must be denied.
   - Prohibited Disclosures include, Disclosures of:
     - Genetic information for underwriting purposes.
     - PHI in which MD Anderson receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI (i.e., a “sale” of PHI).

B. If the stated purpose of the request is for a permitted or required Disclosure (see Section 1.4 of MD Anderson’s Patient Privacy: Authorization for the Use and Disclosure of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0396). If the request is for a permitted Disclosure, determine whether an exception to the Minimum Necessary Standard exists (see Section 3.3, above).
   - In the event that an exception to the Minimum Necessary Standard applies, the request should be approved and the Disclosure made.
   - In the event that no exception applies, each request must be reviewed on an individual basis to determine whether the PHI being requested is limited to the minimum amount necessary to achieve the stated purpose. If the PHI being requested is not limited to the minimum amount necessary to achieve the stated purpose, the request must be modified to meet the Minimum Necessary Standard.

5.4 Departments responsible for processing requests for Disclosure of PHI will provide guidelines and other policies and procedures, as needed, to assist Workforce Members in making these determinations.

5.5 Additional Requirements for Certain Uses and Disclosures

Certain types of information require the individual’s Authorization, even for Disclosures for Treatment, Payment, or Health Care Operations purposes. Disclosures of the following types of information or for the following purposes generally require Authorization regardless of the purpose of the Disclosure:

- Psychotherapy Notes.
- Substance Abuse Treatment Records.
- Marketing.
- Sale of PHI.
- Sensitive Notes.
- Private Notes.

See Section 1.2 of the Patient Privacy: Authorization for the Use and Disclosure of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0396) for more information.
6.0 Routine and Recurring Disclosures

For routine or recurring requests for Disclosure, the above determination need only be made the first time the request is received. Departments responsible for processing requests for Disclosure of PHI will maintain procedures related to processing routine or recurring requests as necessary and appropriate. If the request is modified or altered in any way, the determination will need to be made again.

7.0 Making Requests for PHI

When the Minimum Necessary Standard applies to a request from MD Anderson to either another part of MD Anderson or to an external entity, the PHI must be limited to the amount which is reasonably necessary to achieve the intended purpose of the request.

7.1 Departments that make routine and/or recurring requests for PHI must implement procedures to ensure that the Minimum Necessary Standard is met when making these requests.

7.2 Non-routine requests for PHI must be reviewed on an individual basis to ensure that only the minimum amount of PHI necessary to achieve the stated purpose is being requested.

8.0 Use or Disclosure of, or Request for, Entire Medical Record

Except for Disclosures or requests related to Treatment, MD Anderson will only Use, Disclose, or request an entire medical record when the entire medical record is specifically justified as being reasonably necessary to accomplish the purpose of the Use, Disclosure, or request. See Confidentiality Policy (UTMDACC Institutional Policy # ADM0264).

9.0 Policy Violations

9.1 Knowledge of a violation or potential violation of this policy must be reported directly to a Supervisor, the Institutional Compliance Office at 713-745-6636, or MD Anderson’s Privacy Hotline at 1-888-337-7497.

9.2 Individuals are required to contact the Chief Compliance Officer when questionable circumstances or conditions arise.

9.3 Violation of this policy may result in disciplinary action in accordance with MD Anderson’s Disciplinary Action Policy (UTMDACC Institutional Policy # ADM0256), up to and including termination.
ATTACHMENTS / LINKS

Forms On Demand.

HIPAA Definitions Plan (Attachment # ATT0699).


Media Authorization and Release Form (Attachment # ATT1601).

Minimum Necessary Worksheet (Attachment # ATT0613).

RELATED POLICIES

Accessibility of Patient Information for Medication Management Policy (CLN0563).

Confidentiality Policy (UTMDACC Institutional Policy # ADM0264).

Disciplinary Action Policy (UTMDACC Institutional Policy # ADM0256).


Patient Privacy: Authorization for the Use and Disclosure of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0396).

JOINT COMMISSION STANDARDS / NATIONAL PATIENT SAFETY GOALS

IM.02.01.01:
“...The hospital protects the privacy of health information.” Comprehensive Accreditation Manual for Hospitals (CAMH), 2016.

IM.02.01.03:
“...The hospital maintains the security and integrity of health information.” Comprehensive Accreditation Manual for Hospitals (CAMH), 2016.

OTHER RELATED ACCREDITATION / REGULATORY STANDARDS


REFERENCES

45 C.F.R. §§ 164.502(b) & 164.514(d).
POLICY APPROVAL

Approved With Revisions Date: 05/24/2016
Approved Without Revisions Date:
Implementation Date: 05/24/2016
Version: 37.0

RESPONSIBLE DEPARTMENT(S)

Institutional Compliance Office