



Privacy Protection Policy

This policy applies to all departments of the Alameda County Health Care Services Agency (HCSA). HCSA departments shall maintain departmental Privacy Protection Policies and Procedures to ensure compliance with this policy and all State and Federal regulations.

Purpose

The purpose of this policy is to clearly define measures to protect Protected Health Information (PHI) when it is collected, processed, stored, or transmitted by HCSA departments.

This policy outlines the fundamental aspects of ensuring privacy and confidentiality of all Protected Health Information.

Policy Statement

HCSA has a duty to ensure privacy of PHI by implementing appropriate policies and procedures. All personnel with access to Protected Health Information are required to understand their responsibilities to safeguard the PHI. Key aspects to properly safeguard PHI include:

- Identifying what is PHI;
- Providing patients with a Notice of Privacy Practices;
- Implementing the minimum necessary principle;
- Implementing administrative, technical, and physical safeguards;
- Understanding the appropriate and prohibited uses of PHI; and
- Allowing individuals a way to correct or amend their PHI when it is appropriate.

Policy Owner

HCSA Departmental Privacy Officer(s)

Standards

1.0 Categorization of Information as PHI

- Information is PHI if it is health information that contains individually identifiable information. Individually identified information is information that can be linked to a particular person (i.e. names, social security numbers, addresses, or birth dates).
- Protected Health Information is all individually identifiable information, whether written, electronic, or oral.
- The information relates to:
 - a. The individual's past, present, or future physical or mental health;



- b. The provision of health care to the individual; or
- c. The past, present, or future payment for the provision of health care to the individual.

2.0 Notice of Privacy Practices or Business Associate Agreement

- Each patient must be provided a Notice of Privacy Practices that includes:
 - a. Description of the ways in which HCSA may use and disclose PHI;
 - b. HCSA department's duties to protect privacy, provide a notice of privacy practices, and abide by the terms of the Notice;
 - c. Description of the individual's rights; and
 - d. A point of contact within HCSA for additional information or to make complaints.
- HCSA must make a good faith effort to obtain the patient's signature acknowledging receipt of the Notice of Privacy Practices.
- If PHI is collected, processed, stored, or transmitted to a Business Associate, HCSA must execute a Business Associate Agreement with the Business Associate.

3.0 Minimum Necessary

- HCSA must make reasonable efforts to use, disclose, and request only the minimum amount of PHI required to accomplish the intended purpose.
- Access to PHI should only be available to those staff members who require access to PHI to perform their individual duties.
- Processes should be reviewed periodically to ensure compliance with the minimum necessary principle.

4.0 Safeguarding PHI

- PHI must be safeguarded regardless of whether it is in verbal, written, or electronic form using physical, administrative, and technical safeguards that meet HIPAA and all other regulatory requirements.

4.1 PHI Use and Misuse

- HCSA is permitted to use or disclose PHI only for specific purposes. Those include,
 - a. To the individual;
 - b. For treatment, payment, or health care operations;
 - c. Disclosures authorized by the individual;
 - d. To the Secretary of Health and Human Services to determine HCSA's compliance with HIPAA requirements;
 - e. To Business Associates, who are only permitted to use or disclose PHI pursuant to the Business Associate Agreement they have with HCSA; or
 - f. To a personal representative, parent, or legal guardian;



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- In the following situations the individual must be made aware of the use or disclosure and be given an opportunity to agree or disagree to how their PHI will be used in order for the use or disclosure to be appropriate:
 - a. To maintain a facility directory; or
 - b. To another individual if that person is directly related to the patient's health care or payment for the patient's health care.
- The HCSA may use or disclose PHI in the following situations without obtaining the patient's authorization, or giving the patient an opportunity to agree or object to the use or disclosure:
 - a. Uses and disclosures required by law;
 - b. Uses and disclosures for public health activities;
 - c. To a government entity if HCSA has a reasonable belief that the patient is a victim of abuse, neglect, or domestic violence;
 - d. Uses and disclosures for health oversight activities;
 - e. Uses and disclosures for judicial and administrative proceedings;
 - f. Uses and disclosures for law enforcement purposes;
 - g. HCSA may disclose PHI to a coroner to assist in the identification of a deceased person;
 - h. HCSA may disclose PHI to a funeral director as necessary to help them carry out their duties.
 - i. Use and disclosure for research purposes;
 - j. Use and disclosure to avert a serious threat to health or safety;
 - k. Use and disclosure for specialized government functions, such as military and veterans activities; and
 - l. Disclosures to comply with workers compensation laws.
- The following disclosures of PHI are prohibited,
 - a. The use or disclosure of genetic information for underwriting purposes; or sale of PHI.
 - b. Disclosing PHI to a Business Associate when no Business Associate Agreement is in place, or outside of the scope of the Business Associate Agreement;
 - c. HCSA's inability to release electronic medical records when requested by an individual;
 - d. Improper disposal of materials containing PHI;
 - e. Reviewing a patient's medical records for no reason; or
 - f. Disclosing PHI after a patient authorization has expired.

5.0 Correction and Amendment of PHI

- HCSA must permit an individual to update or correct PHI.



- Changes must be granted when the PHI is incorrect, or outdated.
- A formal request process for the update or amendment of PHI must be followed that includes the following steps,
 - a. Once a request is made by an individual to update or amended his or her PHI, HCSA must conduct a timely review the requested change.
 - b. If the change is not warranted, the individual must be notified in writing that the request has been denied.
 - c. If the request is granted, HCSA must provide the updated or amended information to any covered entity that it has received PHI from, or transferred PHI to, regarding the individual.

6.0 *PHI and Marketing Materials*

- HCSA must protect individuals' PHI when it is creating marketing materials.
- Marketing materials should be periodically reviewed to ensure that no PHI (i.e. identifiable images) is included.
- Any identifiable PHI that is used in marketing materials must be authorized by the individual.
- Authorizations to use PHI in marketing must be retained by HCSA.

References

Internal

Security Policies and Procedures

Business Associate Policy



External

1. 45 C.F.R. § 164.502(a): *Standard*. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter. (1) *Covered entities: Permitted uses and disclosures*. A covered entity is permitted to use or disclose protected health information as follows: (i) To the individual; (ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506; (iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§ 164.502(b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure; (iv) Except for uses and disclosures prohibited under § 164.502(a)(5)(i), pursuant to and in compliance with a valid authorization under § 164.508; (v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and (vi) As permitted by and in compliance with this section, § 164.512, § 164.514(e), (f), or (g).
2. 45 C.F.R. § 164.502(b): *Standard: Minimum necessary — Minimum necessary applies*. When using or disclosing protected health information or when requesting protected health information from another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
3. 45 C.F.R. § 164.520(a): *Standard: Notice of privacy practices —(1) Right to notice*. Except as provided by paragraph (a)(2) or (3) of this section, an individual has a right to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights and the covered entity's legal duties with respect to protected health information.
4. 45 C.F.R. § 164.520(b) *Implementation specifications: Content of notice —*
 - (1) *Required elements*. The covered entity must provide a notice that is written in plain language and that contains the elements required by this paragraph.
 - (i) *Header*. The notice must contain the following statement as a header or otherwise prominently displayed:

“THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.”
 - (ii) *Uses and disclosures*. The notice must contain:
 - (A) A description, including at least one example, of the types of uses and disclosures that the covered entity is permitted by this subpart to make for each of the following purposes: treatment, payment, and health care operations. (B) A description of each of the other purposes for which the covered entity is permitted or required by this subpart to use or disclose protected health information without the individual's written authorization. (C) If a use or disclosure for any purpose described in paragraphs (b)(1)(ii)(A) or (B) of this section is prohibited or materially limited by other applicable law, the description of such



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use or disclosure must reflect the more stringent law as defined in § 160.202 of this subchapter. (D) For each purpose described in paragraph (b)(1)(ii)(A) or (B) of this section, the description must include sufficient detail to place the individual on notice of the uses and disclosures that are permitted or required by this subpart and other applicable law. (E) A description of the types of uses and disclosures that require an authorization under § 164.508(a)(2)-(a)(4), a statement that other uses and disclosures not described in the notice will be made only with the individual's written authorization, and a statement that the individual may revoke an authorization as provided by § 164.508(b)(5).

(iii) *Separate statements for certain uses or disclosures.* If the covered entity intends to engage in any of the following activities, the description required by paragraph (b)(1)(ii)(A) of this section must include a separate statement informing the individual of such activities, as applicable: (A) In accordance with § 164.514(f)(1), the covered entity may contact the individual to raise funds for the covered entity and the individual has a right to opt out of receiving such communications; (B) In accordance with § 164.504(f), the group health plan, or a health insurance issuer or HMO with respect to a group health plan, may disclose protected health information to the sponsor of the plan; or (C) If a covered entity that is a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of *health plan*, intends to use or disclose protected health information for underwriting purposes, a statement that the covered entity is prohibited from using or disclosing protected health information that is genetic information of an individual for such purposes.

(iv) *Individual rights.* The notice must contain a statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights, as follows: (A) The right to request restrictions on certain uses and disclosures of protected health information as provided by § 164.522(a), including a statement that the covered entity is not required to agree to a requested restriction, except in case of a disclosure restricted under § 164.522(a)(1) (B) The right to receive confidential communications of protected health information as provided by § 164.522(b), as applicable; (C) The right to inspect and copy protected health information as provided by § 164.524; (D) The right to amend protected health information as provided by § 164.526; (E) The right to receive an accounting of disclosures of protected health information as provided by § 164.528; and (F) The right of an individual, including an individual who has agreed to receive the notice electronically in accordance with paragraph (c)(3) of this section, to obtain a paper copy of the notice from the covered entity upon request.

(v) *Covered entity's duties.* The notice must contain: (A) A statement that the covered entity is required by law to maintain the privacy of protected health information, to provide individuals with notice of its legal duties and privacy practices with respect to protected health information, and to notify affected individuals following a breach of unsecured protected health information; (B) A statement that the covered entity is required to abide by the terms of the notice currently in effect; and (C) For the covered entity to apply a change in a privacy practice that is described in the notice to protected health information that the covered entity created



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or received prior to issuing a revised notice, in accordance with § 164.530(i)(2)(ii), a statement that it reserves the right to change the terms of its notice and to make the new notice provisions effective for all protected health information that it maintains. The statement must also describe how it will provide individuals with a revised notice.

(vi) *Complaints*. The notice must contain a statement that individuals may complain to the covered entity and to the Secretary if they believe their privacy rights have been violated, a brief description of how the individual may file a complaint with the covered entity, and a statement that the individual will not be retaliated against for filing a complaint.

(vii) *Contact*. The notice must contain the name, or title, and telephone number of a person or office to contact for further information as required by § 164.530(a)(1)(ii).

(viii) *Effective date*. The notice must contain the date on which the notice is first in effect, which may not be earlier than the date on which the notice is printed or otherwise published.

(2) *Optional elements*. (i) In addition to the information required by paragraph (b)(1) of this section, if a covered entity elects to limit the uses or disclosures that it is permitted to make under this subpart, the covered entity may describe its more limited uses or disclosures in its notice, provided that the covered entity may not include in its notice a limitation affecting its right to make a use or disclosure that is required by law or permitted by § 164.512(j)(1)(i).

(ii) For the covered entity to apply a change in its more limited uses and disclosures to protected health information created or received prior to issuing a revised notice, in accordance with § 164.530(i)(2)(ii), the notice must include the statements required by paragraph (b)(1)(v)(C) of this section.

(3) *Revisions to the notice*. The covered entity must promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, the individual's rights, the covered entity's legal duties, or other privacy practices stated in the notice. Except when required by law, a material change to any term of the notice may not be implemented prior to the effective date of the notice in which such material change is reflected.

5. 45 C.F.R. § 164.526(a): *Standard: Right to amend*. (1) *Right to amend*. An individual has the right to have a covered entity amend protected health information or a record about the individual in a designated record set for as long as the protected health information is maintained in the designated record set.

(2) *Denial of amendment*. A covered entity may deny an individual's request for amendment, if it determines that the protected health information or record that is the subject of the request: (i) Was not created by the covered entity, unless the individual provides a reasonable basis to believe that the originator of protected health



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information is no longer available to act on the requested amendment; (ii) Is not part of the designated record set; (iii) Would not be available for inspection under § 164.524; or (iv) Is accurate and complete.

6. 45 C.F.R. § 164.530(c): (1) *Standard: Safeguards*. A covered entity must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information.

(2)(i) *Implementation specification: Safeguards*. A covered entity must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart.

(ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

7. 45 C.F.R. § 164.530(i): (1) *Standard: Policies and procedures*. A covered entity must implement policies and procedures with respect to protected health information that are designed to comply with the standards, implementation specifications, or other requirements of this subpart and subpart D of this part. The policies and procedures must be reasonably designed, taking into account the size and the type of activities that relate to protected health information undertaken by a covered entity, to ensure such compliance. This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirement of this subpart.

(2) *Standard: Changes to policies and procedures*. (i) A covered entity must change its policies and procedures as necessary and appropriate to comply with changes in the law, including the standards, requirements, and implementation specifications of this subpart or subpart D of this part.

8. 45 C.F.R. § 164.530(j): (1) *Standard: Documentation*. A covered entity must: (i) Maintain the policies and procedures provided for in paragraph (i) of this section in written or electronic form; (ii) If a communication is required by this subpart to be in writing, maintain such writing, or an electronic copy, as documentation; and (iii) If an action, activity, or designation is required by this subpart to be documented, maintain a written or electronic record of such action, activity, or designation. (iv) Maintain documentation sufficient to meet its burden of proof under § 164.414(b).

(2) *Implementation specification: Retention period*. A covered entity must retain the documentation required by paragraph (j)(1) of this section for six years from the date of its creation or the date when it last was in effect, whichever is later.

9. 45 C.F.R. § 164.508(a)(3) *Authorization required: Marketing*. (i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered



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entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing involves financial remuneration, as defined in paragraph (3) of the definition of marketing at § 164.501, to the covered entity from a third party, the authorization must state that such remuneration is involved.

10. 45 C.F.R. § 164.508(a)(1) *Standard: Authorizations for uses and disclosures —*

(1) *Authorization required: General rule.* Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

11. 45 C.F.R. § 164.510(a) A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this section.

(a) *Standard: Use and disclosure for facility directories —*(1) *Permitted uses and disclosure.* Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may:

(i) Use the following protected health information to maintain a directory of individuals in its facility:

(A) The individual's name;

(B) The individual's location in the covered health care provider's facility;

(C) The individual's condition described in general terms that does not communicate specific medical information about the individual; and

(D) The individual's religious affiliation; and

(ii) Use or disclose for directory purposes such information:

(A) To members of the clergy; or



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(B) Except for religious affiliation, to other persons who ask for the individual by name.

12. 45 C.F.R. § 164.510 A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

Approval

Name	Title	Date
C. McKetney	Director of Data Analytics	01/02/2019

Version History

Version #	History of Changes	Author	Date
1.0	Initial Policy Adopted	S.Stier	01/02/2019