

	Ethics & Compliance Department	
	Policy No.: 8	Created: 01/2018
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	Revised:	

HIPAA: DISCLOSING PROTECTED HEALTH INFORMATION AS REQUIRED BY LAW

SCOPE:

All Envision Healthcare teammates. For purposes of this policy, all references to “teammate” or “teammates” include temporary, part-time and full-time employees, independent contractors, clinicians, officers and directors.

PURPOSE:

Envision Healthcare Operating, Inc. and its subsidiaries and affiliates (“Envision” or “the Company”) has adopted this Disclosing Protected Health Information as Required by Law policy to provide guidance to teammates regarding the procedures to be followed when using or disclosing protected health information (“PHI”) as required by law.

POLICY:

Disclosures Required by Law

State and federal laws and regulations may mandate certain uses or disclosures of patient PHI. For example, reports of child abuse are required under the laws of most states. If the law or regulation can be enforced by an official government agency, it is deemed to be required by law. (This does not include private contractual agreements between parties.) The Company may use or disclose patient information for purposes required by law in accordance with applicable state and federal laws.

Overlap with Other Policies

Many uses and disclosures required by law are also covered by other policies, such as the policies on public health activities and health oversight. Other than the exceptions listed below, if a use or disclosure is required by law and also falls under another policy, the Company may follow either this policy or the other applicable policy in determining how to use or disclose the PHI.

Allowable Disclosures to Government Authorities

If, in the documented professional opinion of a licensed professional affiliated with the Company, an adult patient reasonably appears to be the victim of abuse, neglect, or domestic violence, the Company may disclose PHI to a government authority, such as a social service or protective service agency, that is authorized by law to receive such reports, only if one of the following circumstances applies:

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- A) The disclosure is required by law and only that information required by and relevant to the law is disclosed.
- B) The patient or the patient’s personal representative has agreed to the disclosure.
- C) The disclosure is expressly permitted by law, and either (i) in the exercise of professional judgment by a licensed professional, the disclosure is necessary to prevent serious harm to the patient or other potential victims, or (ii) the patient is unable to agree to the disclosure and a law enforcement or other public official represents that the PHI is not intended to be used against the patient and that an immediate enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the patient is able to agree.

Informing the Patient

The patient must be informed promptly, either verbally or in writing, when a report has been or will be made, except under the following circumstances:

- A) A licensed professional affiliated with the Company, in the exercise of professional judgment, believes informing the patient would place him or her at risk of serious harm; or

The patient is not capable of being informed, and his or her personal representative may be responsible for the abuse, neglect, or other injury, and therefore informing the personal representative would not be in the best interests of the patient, as determined by a licensed professional affiliated with the Company, in the exercise of professional judgment.

Orders of Court or Administrative Tribunal

PHI may be released in response to a valid court order or an order from an administrative tribunal.

A valid court order is one that has been specifically approved by the court and signed by the judge. It does not include a subpoena automatically issued by a clerk of the court at the request of an attorney. An “administrative tribunal” is a specialized court associated with an administrative agency, such as the IRS or Social Security Administration, rather than a general court that hears a variety of types of cases. An order from an Administrative Law Judge (“ALJ”) should be treated like an order of any other court. Contact legal counsel if there are any doubts about the validity of an order from a court or administrative tribunal.

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Subpoenas, Discovery Requests, and Other Legal Process

PHI may be released as follows:

- A) The patient provides a written and dated authorization to release the information to the requesting party. The authorization must meet the requirements set forth in the Company’s separate policy on authorizations for the release of information (*See Policy 39 – Authorization Requirements*).
- B) The subpoena or request is accompanied by a valid order from a court or administrative tribunal, as described above.
- C) Satisfactory assurance has been obtained from the party seeking the information that either (1) acceptable notice has been given to the patient or the patient’s personal representative, or (2) an appropriate protective order has been obtained.
- D) The subpoena requires the information to be disclosed for law enforcement or investigation purposes, and meets the requirements listed in the Company’s separate policy regarding disclosures for law enforcement purposes (*See Policy 8 – Disclosing Protected Health Information as Required by Law*). This includes grand jury subpoenas and subpoenas issued by government attorneys on behalf of local, state, and federal enforcement agencies.

Release only the information expressly authorized by the order or requested by the subpoena.

Law Enforcement Agencies and Officials

Law enforcement agencies and officials may be provided with PHI only in accordance with this policy.

A “law enforcement official” includes any officer or employee of a city or municipality, a state, the United States, or an Indian tribe, who is empowered to investigate a potential violation of a law or to prosecute or conduct a judicial proceeding arising from an alleged violation of law. Law enforcement officials include, but are not limited to, local police, state troopers, FBI agents, and representatives of the federal Office of the Inspector General who are investigating a potential Medicare fraud violation. They also include grand juries, district attorneys, US attorneys, other prosecuting entities who are investigating or prosecuting a crime, military police (“MPs”) who are conducting an investigation into a crime committed by a member of the military, and judges who issue court orders for the disclosure of information needed in an investigation.

Required By Law

PHI may be disclosed to law enforcement agencies to make reports that are required by law, including the following:

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- A) To report suspicious injuries, such as an injury by knife, pistol, gun, or other “deadly weapon,” or caused by poisoning or suffocation.
- B) To report suspected abuse or neglect.

Response to Legal Process

PHI may be disclosed in response to legal process or summons, as follows:

- A) To comply with a court order or court-ordered warrant ordering disclosure to the law enforcement agency.
- B) To comply with a subpoena or summons issued by a judicial officer rather than by a private attorney. If the subpoena was issued by a private attorney, or if it calls for the information to be provided to someone other than a law enforcement official, refer to the policy on disclosures in response to subpoenas (*See* Policy 8 – Disclosing Protected Health Information as Required by Law).
- C) To comply with a grand jury subpoena.
- D) Pursuant to an official request from a law enforcement agency (e.g., a request for information from an enforcement agency of the federal government, such as the Bureau of Alcohol, Tobacco and Firearms), provided that (i) the information sought is relevant and material to a legitimate law enforcement inquiry, (ii) the request for such information is specific and limited to the purpose for which the information is sought, and (iii) the agency could not conduct the investigation using de-identified information

Suspects, Fugitives, Material Witnesses, or Missing Persons

PHI may be provided to law enforcement agencies and officials who are attempting to identify or locate a suspect, fugitive, material witness, or missing person. The information may be provided in response to requests by a properly identified law enforcement officer or in response to a public bulletin issued by a law enforcement agency.

- A) Only the following information may be provided:
 - (1) Name and address
 - (2) Date and place of birth
 - (3) Social security number
 - (4) ABO blood type and Rh factor
 - (5) Type of injury
 - (6) Date and time of treatment
 - (7) Date and time of death, (if applicable)

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(8) Description of any distinguishing physical characteristics of the patient, including height, weight, gender, race, hair and eye color, facial hair, scars, and tattoos.

- B) Do not disclose any information related to DNA or a DNA analysis, dental records, samples or analysis of body fluids or tissues, or any other information beyond the information listed above, unless the officer presents a warrant, subpoena, or court order meeting the requirements of *Response to Legal Process* section, above.

Victims of Crime

If the patient is suspected of being the victim of an alleged crime, PHI may be disclosed to law enforcement officials as follows:

- A) A conscious, competent patient must be asked if the information may be disclosed to law enforcement officials. Document the time, date, and name of the persons who witnessed the patient’s agreement or refusal. If possible, obtain an “Authorization” form signed by the patient (*See Policy 13 – Personal Representatives and form attached thereto*).
- B) If the patient is not competent, the patient’s legally authorized representative may agree to the disclosure of the information, in which case they should sign an “Authorization” form (*See Policy 13 – Personal Representatives regarding who qualifies as a legally authorized representative and form attached thereto*). If no legally authorized representative is available, try to find a family member who may agree to contact law enforcement officials directly.
- C) In an emergency, or when no authorized representative or family member is available, the PHI may be disclosed only if the law enforcement officer represents that (i) the PHI is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim, and (ii) immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure. .

Deaths

Suspicious deaths, including related PHI, may be disclosed to law enforcement agencies and officials if the death is suspected of being the result of criminal conduct.

Criminal Activity on Premises

Evidence of suspected criminal conduct occurring on the Company’s premises, including related PHI, may be disclosed to law enforcement agencies and officers.

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Criminal Activity Off-Site

An individual health care provider may disclose information to law enforcement officers that he or she learned while responding to a medical emergency off-premises, if necessary to alert them to the commission or nature of a crime, the location or victims of a crime, or the identity, description, or location of the perpetrator of a crime.

Reports to Avert a Serious Threat

A report may be made to law enforcement authorities to help identify or apprehend an individual under the following circumstances:

- A) Because the individual made a statement admitting participation in a violent crime that is reasonably believed to have caused serious physical harm to the victim (in which case the only information that may be disclosed is the individual’s statement and the patient information described in the *Suspects, Fugitives, Material Witnesses, or Missing Persons* section above), or
- B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

Verification of Identity

Before disclosing PHI to a law enforcement officer or agency, the officer’s or agency’s identity must be verified and documented. If the person is a police officer, ask to see his or her badge and record the badge number. For persons who do not have a badge, obtain their business card or other proof of their credentials. All requests received in writing should be on official letterhead. If any doubt exists regarding the validity of a request, contact the Privacy Official for further determination.

Logging of Disclosure

All disclosures required by law must be logged in accordance with the separate policy regarding accounting of disclosures (*See Policy 33 – Accounting of Disclosures*).

POLICY REVIEW

The Ethics & Compliance Department will review and update this Policy, when necessary, in the normal course of its review of the Company’s Ethics & Compliance Program.