

Section 6	Compliance Policies	04/11/03-Originated
Subject 6.2	Privacy Related	07/18/13-Reviewed w/changes -Reviewed w/o changes
Policy 6.2.0	Maintaining Patient Confidentiality through the Appropriate Use and Disclosure of PHI	08/15/13 -Effective Compliance Office - Author

Maintaining Patient Confidentiality through the Appropriate Use and Disclosure of PHI

I. Definitions

Protected Health Information (PHI): Individually identifiable health information transmitted or maintained in any form or medium, including oral, written, and electronic. Individually identifiable health information relates to 1) the past, present, or future physical or mental health, or condition of an individual; 2) provision of health care to an individual; or 3) past, present, or future payment for the provision of health care to an individual. Information is considered PHI where there is a reasonable basis to believe the information can be used to identify an individual. Demographic information on patients is also considered PHI.

Use: With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information that identifies, or reasonably can be used to identify, a patient within UTMB.

Disclosure: The release of, transfer of, providing access, or divulging in any other manner protected information (PHI) outside of UTMB.

Treatment: The provision, coordination, or management of health care related services by one or more health care providers, including the 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 for the referral of a patient for health care from one health care provider to another.

Payment: Any activities undertaken either by a health plan or by a health care provider to obtain premium or fulfill its responsibility for coverage and the provision of benefits or to obtain or provide reimbursement for the provision of health care. These activities include, but are not limited to:

1. Determining eligibility, and adjudication or subrogation of health benefit claims
 2. Risk adjusting amounts due based on enrollee health status and demographic characteristics
 3. Billing, claims management and collection activities
 4. Obtaining payment under a contract for reinsurance, and related health care processing
 5. Review of healthcare services with respect to medical
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**Definitions,
continued**

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- necessity, coverage under a health plan, appropriateness of care, or justification of charges
 - 6. Utilization review activities, including pre-certification and preauthorization services, concurrent and retrospective review of services
 - 7. Disclosure to consumer reporting agencies of certain Protected Healthcare Information (PHI) relating to collection of premiums or reimbursement.

Health care operations: Any one of the following activities to the extent the activities are related to providing health care:

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; patient safety activities (as defined in 42 CFR 3.20); 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, and related functions that do not involve treatment
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider 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
3. Underwriting, enrollment, premium rating, and other activities relating 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
4. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs
5. Business planning and development, such as conducting cost management and planning related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or covered policies
6. Business management and general administrative activities:

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**Definitions
(cont'd)**

- a. Management activities related to HIPAA compliance
- b. Customer Service
- c. Resolution of internal grievances
- d. Sale, transfer, merger, or consolidation of covered entities, creating de-identified health information or limited data set, and fundraising for the benefit of UTMB

Minimum Necessary: When using or disclosing PHI or when requesting PHI from another health care provider or health organization, UTMB personnel must limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

UTMB Personnel: Any faculty, staff, student, volunteer, or any other contractors or agents of UTMB.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UTMB or a business associate, is under direct control of UTMB or a business associate,, even if they are not paid by UTMB or business associate.

Policy

UTMB is committed to maintaining the confidentiality of our patients through the proper use and disclosure of patients' Personal Health Information (PHI). All UTMB personnel have a duty to follow the procedures in this policy and report any suspected breaches of patient privacy to the Office of Institutional Compliance.

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individual may be subject to loss of access privileges and civil and/or criminal prosecution.

Use and Disclosure of PHI for TPO Purposes

PHI may be disclosed without patient authorization for treatment, payment, or healthcare operations (TPO). This includes the following:

1. UTMB's own treatment, payment, or healthcare operations (TPO).
2. Treatment activities of another health care provider
3. The payment activities of another covered entity or healthcare provider; and

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Use and Disclosure of PHI for TPO Purposes, continued

4. The healthcare operation activities of another covered entity or health care provider, if each entity has or had a relationship with the individual who is the subject of the PHI being requested, and the disclosure is:
 - a. For a purpose listed in the definition of health care operations; or
 - b. For the purpose of health care fraud and abuse detection or compliance

Minimum Necessary

A. Disclosures for Payment

1. Only the minimum necessary PHI shall be disclosed for payment functions, as provided through contractual agreement.
2. Persons handling PHI in a payment context shall refrain from publicizing patient diagnosis information.
3. This policy shall apply to checks collected, credit card paper receipts, and envelopes.

B. Disclosures for Student Use

1. *Students and trainees are to adhere to the minimum necessary standard. Students are considered to be part of the treatment process if they are actively involved in the patient's care, and therefore are not limited in their access or use of the patient's medical information.*

C. Use and Disclosure for Educational Purposes

1. Faculty, staff, students, and trainees are to use de-identified information when in a classroom setting, and the patient's identifying information (i.e. name, DOB, address, etc.) is not needed for the educational purpose. Reference IHOP Policy 6.2.29 , *De-identification of PHI*.

D. Good Faith Reliance

1. UTMB may reasonably rely on a requested disclosure as the minimum necessary for the stated purpose when:
 - a. Making disclosure to public officials that do not require patient authorization or an opportunity for the patient to agree or object, and the public official represents that the information is the minimum necessary for the stated purpose;
 - b. The information is requested by another covered entity;
 - c. The information is requested by a professional (such as an attorney or accountant) providing professional services to UTMB either as an employee or as a business associate who represents that the information requested is the minimum necessary for the stated purpose;

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Minimum Necessary, continued

d. A researcher has appropriate IRB or privacy board documentation.

E. Minimum Necessary does not apply in the following circumstances:

1. Disclosure to or requests by a health care provider for treatment (students and trainees are included as health care providers for this purpose);
2. Information requested by the individual to whom it belongs;
3. Uses and disclosures based upon a valid authorization to use and disclose PHI;
4. Disclosures made to the Secretary of Health and Human Services;
5. Uses and disclosures required by law;
6. Uses and disclosures required by other sections of the HIPAA privacy regulations.

Use and Disclosure of PHI for non-TPO Purposes

A. Use and Disclosure for Non-TPO Purposes. UTMB may not use and disclose PHI for non-TPO purposes, unless:

1. UTMB has obtained a valid authorization for disclosure of PHI signed by the patient or personal representative of the patient that meets the requirements of IHOP Policy 6.2.1, Use and Disclosure of PHI based on Patient Authorization; or
2. The disclosure meets at least one of the conditions outlined in IHOP Policy 6.2.2, *Use and Disclosure of PHI to Family and Friends for Individual Care and Notification Purposes*, 6.2.3 *Use and Disclosure by and for Personal Representatives, Minors, and Deceased Individuals*, or 6.2.16, *Permitted Use and Disclosure of PHI in Special Situations*.

Inappropriate Use and Disclosure of PHI

- A. UTMB personnel must only use patient PHI when it is directly related to his/her work duties.
 1. Any use of disclosure of patient information outside the scope of employment is a breach of confidentiality.
 2. Medical records are not to be used as reading material or accessed out of curiosity.
- B. UTMB personnel are responsible for all information accessed under their user name and password.
 1. Sharing passwords or leaving computers unattended and logged in to a program containing PHI while unattended jeopardizes patient confidentiality and will be considered a breach of confidentiality if the information is accessed inappropriately.

C. Examples of inappropriate use of PHI resulting in a breach of

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Inappropriate Use and Disclosure of PHI, continued

patient confidentiality include:

1. A UTMB employee who uses an electronic system to look up the phone number and address of a patient for personal reasons.
2. A UTMB employee who is concerned about a patient in the hospital looks up the patient’s information to see how they are doing.
3. A UTMB employee that looks up a friend’s lab results because the friend wants the results in a more timely fashion.
4. A Patient Services Specialist responsible for registering a patient that goes beyond his/her work duty and accesses detailed lab results on the patient in addition to the PHI necessary to register the patient.
5. A UTMB employee that is involved in a family dispute and accesses information about the welfare of a family member, including information about when their next appointment at UTMB is.
6. A UTMB employee is asked by a visitor the location of a patient. The UTMB employee looks up the information for the visitor even though it is not part of the employee’s job. (Employees should direct visitors to the Help Information Desk in the hospital. For more information, please refer to the Patient Directory policy.)
7. A UTMB employee that accesses the UTMB bed census to find out where a friend, family member or co-worker is being treated.

D. UTMB personnel are responsible for all disclosures of PHI. The disclosure of PHI, whether written, oral or electronic must be done solely for TPO purposes associated with the patient in accordance with this policy.

1. Communicating confidential patient information inappropriately, carelessly, or negligently is a breach of confidentiality. (Ex. Casual discussions regarding patients, discussion in public areas, and/or unauthorized release of information while on or off campus.)
2. Professional discussion of patient conditions or medical plans should be limited to private areas and should not be discussed in public areas such as hallways or waiting areas.
3. Casual discussions regarding patients and/or unauthorized release of information are considered a breach of confidentiality.

E. Examples of inappropriate disclosure of PHI resulting in a breach of patient confidentiality include:

1. A UTMB employee, treating a well known person in the

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Inappropriate Use and Disclosure of PHI, continued

- community, telling other UTMB employees (not on the patient’s treatment team) about the diagnosis of the patient.
2. A UTMB nurse telling another employee, who is not involved in the treatment activities of a patient, that patient’s medical condition.
 3. A UTMB employee learns about the condition of a patient who is also a family member while at work. The UTMB employee then tells other family members about the patient’s condition.
 4. A UTMB employee who sends an email to her spouse that contained PHI on patients the employee was treating.
 5. A UTMB employee who discloses identifying information on a patient and talks about the medical condition of the patient in the dining hall with friends at lunch.
 6. A UTMB employee who accidentally leaves detailed medical notes on patients on a table next to a soft drink machine while on break.
 7. A UTMB employee who discloses information to a visitor on a “no information” patient.

References

- 45 C.F.R. §164.501
- 45 C.F.R. §164.514 (d)
- 45 C.F.R. §164.506
- Institutional Handbook of Operating Procedures Policies:
 - 6.2.1, Use and Disclosure of PHI based on Patient Authorization
 - 6.2.16, Permitted *Use and Disclosure of PHI in Special Situations*