Section 6 Subject 6.2 **Policy 6.2.16**	Compliance Privacy Related **Permitted Uses and Disclosures of PHI in Special Situations**	05/12/03 -Originated 07/18/13 -Reviewed w/ changes -Reviewed w/o changes 08/15/13-Effective Office of Institutional Compliance -Author

Permitted Uses and Disclosures of PHI in Special Situations

Definitions

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

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.

Qualified Protective Order: With respect to PHI requested for judicial and administrative proceedings, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

1. Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and
2. Requires the return to UTMB or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

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

Generally, the HIPAA Privacy Regulations allow Protected Health Information (PHI) to be used and disclosed in the following ways:

- By UTMB, for Treatment, Payment or healthcare Operations (TPO),
- By UTMB, with the patient's authorization; subject to the different requirements and limitations that exist for oral or written authorization, and
- By UTMB, if the use or disclosure meets "the permitted uses and disclosures" as specified by the HIPAA Regulations.

When requested information contains PHI that is not routinely disclosed in a department or service area and falls within a category listed below, do not disclose the PHI without notifying your supervisor and obtaining permission to disclose the PHI. If there is ever a question as to whether the information requested should be disclosed, contact Health Information Management or the Office of Institutional Compliance.

Violation of this policy may further 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, individuals may be subject to loss of access privileges and civil and/or criminal prosecution**.**

As Required By Law

UTMB will use or disclose PHI when required to do so by federal, state, or local law. UTMB is required to report PHI to certain agencies and authorities. Patient authorization is not required for this mandatory reporting and UTMB cannot grant a patient's request for restriction if the request will interfere with mandatory reporting requirements.

See IHOP Policy 06.02.26 *Patient Rights Related to Protected Health Information*, and HIM 6.4.31 *Requests for Restricting Use and Disclosure and Confidential Communication*. The Office of Institutional Compliance should be contacted for all PHI inquiries by city, state or federal officials outside of disclosures required by law.

Coroners, Medical Examiners and Funeral Directors.

A. Medical Examiners for Identification and Cause of Death. UTMB may release PHI to a coroner or medical examiner to identify a deceased person or to determine the cause of death. UTMB may also release PHI about patients of UTMB to funeral directors as necessary to help them carry out their duties. If a coroner or medical examiner is undertaking an investigation and requires medical records, the coroner or medical examiner must request medical records pursuant to a valid subpoena or request medical records from Health Information Management (HIM) through a written request citing the statutory provision that grants them power to request and obtain information.

B. Funeral Directors. UTMB may also release PHI about patients of UTMB to funeral directors as necessary to help them carry out their duties.

Correctional Institutions and Inmate PHI.

A. UTMB may disclose PHI to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual if the institution or law enforcement official represents that such PHI is necessary for:

1. The provision of health care to such individuals;
2. The health and safety of such individual or other inmates;
3. The health and safety of the officers or employees of or others at the correctional institution;
4. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
5. Law enforcement on the premises of the correctional institution; or
6. The administration and maintenance of the safety, security, and good order of the correctional institution.

B. Under the HIPAA privacy rules, an inmate's PHI must be protected like any other patient's PHI. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

Health Oversight Activities.

UTMB may disclose PHI to a health oversight agency for activities authorized by law such as audits, investigations, inspections and licensure related inquiries of UTMB or its employees. These activities are necessary for the government to monitor the health care system, government programs, and compliance with civil rights laws. In some instances, if a health oversight activity or investigation is related to a claim for public benefits not related to healthcare, a joint activity or investigation shall be considered a health oversight activity for purposes of this policy.

Lawsuits and Disputes

A. Judicial and Administrative Proceedings. UTMB may disclose PHI for judicial and administrative proceedings in response to a subpoena, discovery request or other lawful process. The Department of Health Information Management (HIM) is responsible for the use or disclosure of all PHI related to subpoenas or other judicial activities. UTMB may use or disclose PHI in the course of any judicial or administrative proceeding:

a. In response to an order of a court or administrative tribunal, provided that UTMB discloses only the PHI expressly authorized by such order; or

b. In response to a subpoena, discovery request, or other lawful process, that is **not** accompanied by an order of a court or administrative tribunal (such as a subpoena from the Texas Department of Health), if:

i) UTMB receives satisfactory assurance from the party seeking the information that reasonable efforts have been made to ensure that the individual who is the subject of the requested PHI has been given notice of the request; or

ii) UTMB receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of this section (in Definitions above).

B. For the purposes of 2(i) above, UTMB receives satisfactory assurances from a party seeking PHI when a written statement and accompanying documents demonstrate that:

1. The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address); and
2. The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and
3. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
   i. No objections were filed; or
   ii. All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

Lawsuits and Disputes, continued

C. For the purposes of (ii) above, UTMB receives satisfactory assurances from a party seeking PHI if UTMB receives a written statement and accompanying documentation demonstrating that:

1. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court having jurisdiction over the dispute; or
2. The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal

D. Notwithstanding this section, UTMB has the option to disclose PHI in response to lawful process without receiving full satisfactory assurance, if UTMB of its own accord makes reasonable efforts to:

a. Provide notice to the individual sufficient to meet the requirements of this section; or
b. Seek a qualified protective order.

Law Enforcement

UTMB may release PHI to a requesting law officer in accordance with HIPAA. If a law enforcement official requests a UTMB employee to use or disclose PHI, the UTMB employee must contact UTMB's Office of Institutional Compliance or the Department of Legal Affairs before disclosing the PHI. Examples of when a law enforcement official may request PHI is:

1. in response to a court order, subpoena, warrant, summons or similar process;
2. as required by law to report certain types of wounds or other physical injuries;
3. to identify or locate a suspect, fugitive, material witness or missing person, but only if limited information (e.g., name and address, date and place of birth, Social Security number, blood type and RH factor, type of injury, date and time of treatment, description of distinguishing characteristics (height, weight, gender, race, hair and eye color, presence of absence of facial hair, scars and tattoos) and date and time of death, if applicable) is disclosed [the same characteristics may be disclosed by UTMB if a member of its workforce becomes a crime victim];
4. about the victim of a crime if the individual agrees or if the individual is unable to agree because of incapacity or other emergency circumstance provided the law enforcement official represents that:

Law Enforcement, continued

a. such information 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 immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree, and
b. the disclosure is in the best interest of the individual as determined by the exercise of professional judgment by UTMB or its employees.
c. about a death we believe may be the result of criminal conduct;
d. about criminal conduct we believed occurred on UTMB's premises; and
e. in emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime.

Organ and Tissue Donation.

UTMB may release PHI to organizations that handle organ procurement or organ, eye or tissue transplantation or to an organ donation bank to facilitate organ or tissue donation and transplantation.

Public Health Activities

UTMB may disclose PHI for public health activities to:

1. A public health authority that is authorized by law to receive such information for the purpose of controlling disease, injury, or disability; or
2. A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect; or
3. A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such products; or
4. A person who may have been exposed to a communicable disease or may be otherwise at risk of contracting or spreading a disease or condition, if UTMB is authorized by law to notify such person as necessary in the course of a public health intervention or investigation; or
5. An employer, about an individual who is a member of the workforce, if:
   i) UTMB provides health care to the individual at the request of the employer:
      (1) To conduct an evaluation relating to medical surveillance of the workplace; or

Public Health Activities, continued

(2) To evaluate whether the individual has a work-related injury.

ii) The PHI that is disclosed consists of findings concerning a work related illness or injury or a workplace-related medical surveillance;

iii) The employer needs such findings in order to comply with its obligations, under federal or state law, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

iv) UTMB provides written notice to the individual that PHI relating to medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of notice to the individual at the time services are provided; or

(2) If the service is provided at the work site of the employer, by posting notice in a prominent area where health care is provided.

6. A school, about an individual who is a student or prospective student of the school, if:

i) The PHI that is disclosed is limited to proof of immunization;

ii) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and

iii) UTMB obtains and documents the agreement to the disclosure from either:

(1) A parent, guardian, or other person acting in loco parentis of the individual, if the individual is an un-emancipated minor; or

(2) The individual, if the individual is an adult or emancipated minor.

7. UTMB may disclose PHI about an individual that it reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority:

i) To the extend required by law and limited by law;

(1) If the individual agrees to the disclosure; or

(2) To the extent that disclosure is explicitly authorized by law and:

(a) UTMB in its professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or potential victims; or

(b) In the event that individual is incapacitated, disclosure may be made to a law enforcement or other public official authorized to receive such reports and represents that the disclosure is not intended to be used against the individual and that waiting for authorization would materially and adversely affect an immediate

Public Health Activities, continued

law enforcement activity.

ii) If UTMB makes a disclosure based on these reasons, UTMB or its employees must notify the individual or the individual's personal representative promptly, unless notice would place the individual at risk of serious harm based the exercise of professional judgment or UTMB reasonably believes the personal representative is responsible for the patient abuse, neglect or other injury and informing the personal representative would not be in the individual's best interest.

Examples of public health activities include:

1. preventing or controlling disease, injury or disability;
2. reporting births and deaths;
3. reporting child abuse or neglect;
4. reporting reactions to medications or problems with products;
5. notifying patients of recalls of products they may be using;
6. notifying governmental agencies, like the FDA, about product related adverse events or injuries;
7. notifying a person who may have been exposed to a disease or may be at risk for contracting or spreading a disease or condition; or
8. notifying the appropriate government authority if there are suspicions that a patient has been the victim of abuse, neglect or domestic violence.

Disaster Relief

A. UTMB may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purposes of coordinating with such entities. UTMB may use or disclose PHI for disaster relief purposes if UTMB:

1. Obtains the individual's oral agreement and the individual has capacity;
2. Obtained the individual's agreement while the individual had capacity to make health care decisions;
3. Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
4. Reasonably infers from the circumstances, based on the exercise of professional judgment that the individual does not object to such disclosure.

The above factors apply as long as UTMB has determined, in the exercise of professional judgment, the requirements do not interfere with the ability to respond to the emergency circumstances.

B. In the case of a disaster, UTMB can share PHI in accordance with the following:

1. To provide treatment to the patient. This includes:

Disaster Relief, continued

a. Sharing information with other providers including hospitals and clinics;
b. Referring patients for treatment;
c. Coordinating patient care with other providers and/or emergency relief workers to help find patients appropriate medical treatment;
d. To identify, locate and notify family members, guardians, or anyone else responsible for the patient's care and provide them with the patient's location and general condition;
e. To notify the police, press or the public at large during or after a disaster to help locate, identify or otherwise notify family members or others as to the location and general condition of a patient.

Serious Threat to Health or Safety/ Imminent Danger

A. UTMB may share PHI with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of the patient or others and the disclosure is to a person(s) reasonably able to prevent or lessen the threat. This may include disclosures to:
    1. Law enforcement;
    2. Family members;
    3. The target of the threat;
    4. Others that UTMB has a good faith belief can mitigate the threat.
B. UTMB may disclose PHI if it is necessary for law enforcement authorities to identify or apprehend an individual:
    1. Because of a statement by an individual admitting participation in a violent crime that UTMB reasonably believes may have caused serious physical harm to the victim unless the statement is made:
        a. In the course of treatment to affect the propensity to commit the criminal conduct, or counseling or therapy; or
        b. Through a request by the individual to initiate or to be referred for the treatment, counseling or therapy described in a. above.

Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

Research

Under certain circumstances, UTMB may use and disclose PHI for research purposes. For more information on research disclosures, please see IHOP policy 6.2.30, *Use and Disclosures of PHI for Research*. .

Specialized Governmental Functions.

A. **Armed Forces and Foreign Military Personnel**. If an individual is a member of the armed forces, UTMB may disclose the individual's PHI as required by military command authorities. UTMB may also disclose PHI about foreign military personnel to the appropriate foreign military authority.

B. **National Security and Intelligence Activities.** UTMB may disclose PHI to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.

C. **Protective Services for the President and Others.** UTMB may disclose PHI to authorized federal officials so they may provide protection to the President of the United States, other authorized persons or foreign heads of state, or to conduct special investigations.

Whistleblowers.

A member of UTMB's workforce or a UTMB business associate may disclose PHI of UTMB patients if the individual believes in good faith that UTMB has engaged in conduct that is unlawful, violates professional or clinical standards, or the care it provides endangers its patients, its workers, or the public. The disclosure must be made to a health oversight agency or a public health authority authorized by law to investigate the relevant conduct, an appropriate health care accreditation organization to report the failure to meet professional standards or misconduct, or an attorney retained by the workforce member or the business associate for the purpose of determining the legal options regarding the reporting of the improper conduct.

Workers' Compensation.

UTMB may disclose PHI for workers' compensation or similar programs. that provide benefits for work-related injuries or illness.
Disclosures may be made to workers' compensation insurers, state administrators, employers, and other individuals or entities involved in workers' compensation programs without the individual's authorization:

1. As authorized by and to the extent necessary to comply with workers' compensation laws or programs established under the law that provide benefits for work-related injuries or illness without regard to fault.
2. To the extent disclosure is required by state or other law. The disclosure must be limited to what the law requires.
3. For purposes of obtaining payment for health care provided to the injured or ill worker.

Documenting Disclosures

The HIPAA regulations require an accounting of all disclosures based on the provisions described in this policy. UTMB has a procedure for documenting and accounting for such disclosures; please see IHOP Policy, Patient Rights Related to Protected Health Information, 06.02.26 and HIM 6.4.32 ROI – Accounting of Disclosure of PHI for more information.

References

45 CFR 164.512; the HIPAA Privacy Standards.
Tex. Occ. Code §159.003
45 C.F.R. §164.512(e)
45 C.F.R. §164.510(b)(4)
U.S. Department of Health and Human Services Office of Civil Rights Bulletin: HIPAA Privacy and Disclosures in Emergency Situations, September 2, 2005 (Post Hurricane Katrina clarification)
IHOP 06.02.26 Patient Rights Related to Protected Health Information
HIM 6.4.32 ROI – Accounting of Disclosure of PHI