HIPPA Privacy Rule Policies

Policies and Procedures **OTHER PERMISSIBLE USES AND DISCLOSURES**	Policy # 26	
APPROVED BY: SUPERCEDES POLICY: NEW	ADOPTED:	
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Purpose

To provide an overview of the circumstances under which LifeMed ID may use or disclose Protected Health Information (PHI) without an individual's Authorization for a range of public interests and activities in accordance with state and federal privacy laws, HIPAA Regulations and LifeMed ID's contracts with its customers.

Policy

It is the policy of LifeMed ID to protect PHI and to use and disclose PHI for the public interest and for public activities in accordance with state and federal privacy laws, HIPAA Regulations and LifeMed ID's contracts with its customers.

All workforce members must comply with this policy. Violations of this policy will result in disciplinary action based on the seriousness of the offense or other factors. Disciplinary action may include written warning, suspension, or termination.

Definitions

"Customer" is an entity from which LifeMed ID receives PHI subject to a Business Associate Agreement (or other written agreement with the entity) in compliance with the HIPAA Regulations and approved by LifeMed ID's legal counsel.

"Health Oversight Agency" means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

"Public Health Authority" means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. See 45 C.F.R. §164.501.

"Public Health Activities" mean the activities of Public Health Authorities that are authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. See 45 C.F.R. §164.512(b).

For definitions of other capitalized terms or phrases, please refer to: *HIPAA-HITECH Privacy and Security Glossary*.

Procedures

The HIPAA Privacy Rule sets forth certain circumstances in which an individual's PHI may be used or disclosed without obtaining an Authorization. In some cases, the use and disclosure is permissible and the entity holding the PHI has some discretion on whether to use or disclose the PHI, subject to state regulations and stipulations in Business Associate contracts. If permitted by your customer's contract, LifeMed ID may disclose PHI in the following circumstances, provided the LifeMed ID Privacy Officer, after conferring with legal counsel, has approved the disclosure in advance and determined that the regulatory requirement for the applicable exception to the requirement for an Authorization has been met:

1. Uses and Disclosures for Public Health Activities. LifeMed ID's Privacy Officer will, in consultation with legal counsel, make the determination of whether PHI will be disclosed for Public Health Activities and will verify the identity and authority of the person(s) requesting the disclosure. LifeMed ID may disclose PHI for the Public Health Activities to:
    a. A Public Health Authority or, at the direction of a Public Health Authority, to an official of a foreign government agency that is acting in collaboration with a domestic Public Health Authority,
    b. A Public Health Authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect (refer to: *Privacy Policy #25: Uses and Disclosures Required by Law*),
    c. 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,
    d. A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if LifeMed ID or a Public Health Authority is authorized by law to notify such person as necessary in the conduct of an intervention or investigation, and
    e. A school, about an individual who is a student or prospective student of the school, for purposes or providing proof of immunization.

This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.512(b) in the Regulatory Authority at the end of this Policy.

2. Uses and Disclosures for Health Oversight Activities. LifeMed ID may disclose PHI to a Health Oversight Agency for health oversight activities authorized by law, including audits, civil, administrative, or criminal investigations, inspections, licensure or disciplinary actions, civil, administrative, or criminal proceedings or actions, or other activities necessary for appropriate oversight of:
    a. The Health Care system,

b. Government benefit programs for which health information is relevant to beneficiary eligibility,
c. Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards, or
d. Entities subject to civil rights laws for which health information is necessary for determining compliance.

This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.512(d) in the *Regulatory Authority* at the end of this policy.

3. Uses and Disclosures for Specialized Government Functions. YOUR COMPANY NAME] may disclose PHI to appropriate authorities under certain circumstances related to the following:
    a. Military and Veterans Activities including:
        i. U.S. Armed Forces Personnel,
        ii. Foreign military personnel
    b. National security and intelligence activities,
    c. Protective services for the President and others,
    d. Correctional institutions and other law enforcement custodial situations.

This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.512(k) in the *Regulatory Authority* at the end of this Policy.

4. Uses and Disclosures for Disaster Relief Purposes. If the individual is not present or is incapacitated, or in the case of an emergency, LifeMed ID may disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for notifying, or assisting in the notification of (including identifying or locating) a family member, a Personal Representative of the individual, or another person responsible for the care of the individual, of the individual's location, general condition, or death. In general, if the individual is present and not incapacitated, LifeMed ID must attempt to obtain the consent of the individual prior to any disclosure of PHI. This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.510(b) in the *Regulatory Authority* at the end of this Policy.
5. Uses and Disclosures to Avert a Serious Threat to Health or Safety. LifeMed ID may use or disclose PHI if LifeMed ID believes, in good faith, that the use or disclosure:
    a. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and is made to a person(s) reasonably able to prevent or lessen the threat, or
    b. Is necessary for law enforcement authorities to identify or apprehend an individual because of a statement made by the individual admitting participation in a violent crime or where it appears that the individual has escaped from lawful custody, unless the disclosure is made as a result of treatment, counseling or therapy, or a request to initiate same by the Individual.

This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.512(j) in the *Regulatory Authority* at the end of this Policy.

6. Uses and Disclosures for Workers' Compensation. LifeMed ID may disclose PHI as authorized by, and to the extent necessary to comply with, laws relating to workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illness without regard to fault. See 45 C.F.R. §164.512(d) in the *Regulatory Authority* at the end of this Policy.

7. Uses and Disclosures about Decedents. Consistent with contractual obligations, LifeMed ID may make the following disclosures of PHI of a decedent to or for:
    a. Coroners and medical examiners for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law,
    b. Funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent,
    c. Law enforcement officials for the purpose of alerting law enforcement of the death of the individual if LifeMed ID has a suspicion that such death may have resulted from criminal conduct. Refer to: *Privacy Policy #25: Uses and Disclosures Required by Law*.
    d. Family, friends and others who were involved in the individual's care before their death, relevant PHI after their death, unless doing so is inconsistent with the individual's previously expressed preference.
    e. Research purposes under certain circumstances. See Section 9 below.

This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.510(b)(5) and 45 C.F.R. §164.512(f), (g) & (i) in the *Regulatory Authority* at the end of this Policy.

8. Uses and Disclosures for Cadaveric Organ, Eye or Tissue Donation Purposes. LifeMed ID may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. See 45 C.F.R. §164.512(h) in the *Regulatory Authority* at the end of this Policy.
9. Uses and Disclosures for Research Purposes. LifeMed ID may use or disclose PHI for research, regardless of the source of funding of the research, provided that one of the circumstances described in Subsections (a – c) below applies.
    a. LifeMed ID obtains documentation that an alteration to or waiver of the individual Authorization has been approved by either:
        i. An Institutional Review Board (IRB), or
        ii. A privacy board consisting of members with varying backgrounds, appropriate professional competency and no conflict of interest.
    b. LifeMed ID obtains from the researcher representations that:
        i. Use or disclosure is sought solely to review PHI as necessary to prepare a research protocol or for similar preparatory purposes,
        ii. No PHI is to be removed from LifeMed ID by the researcher in the course of the review, and
        iii. The PHI for which use or access is sought is necessary for the research purposes.
    c. LifeMed ID obtains from the researcher:
        i. Representation that the use or disclosure sought is solely for research on the PHI of decedents,
        ii. Documentation, at the request of LifeMed ID, of the death of such individuals, and
        iii. Representation that the PHI for which use or disclosure is sought is necessary for the research purposes.

This is a summary of the permitted uses and disclosures. For more detail, see 45 C.F.R. §164.502(a)(5) and 45 C.F.R. §164.512(i) in the *Regulatory Authority* at the end of this Policy.

10. Minimum Necessary. All disclosures made under this policy will be limited to the minimum amount necessary to carry out the purpose of the disclosure consistent with *Privacy Policy #5: Minimum*

Necessary: Uses, Disclosures and Requests. LifeMed ID may rely on a statement by a public official that only the minimum necessary information has been requested. Such statement will be documented.

11. Accounting of Disclosure. All the permissible disclosures described above will be included in an Accounting of Disclosures except for disclosures:
    a. For national security or intelligence,
    b. To correctional institutions or law enforcement officials when having lawful custody of the subject, and
    c. Included as part of a Limited Data Set.

Refer to: *Privacy Policy #11: Accounting of Disclosures* and *Privacy Policy #17: Uses and Disclosures of Limited Data Sets*.

Documentation

This version of the policy, together with any forms and other documentation created or obtained in accordance with the policy, will be retained by LifeMed ID for a period of at least 6 years plus the current year from the date of creation or the date when last in effect, whichever is later.

Regulatory Authority

45 C.F.R. §164.501 Definitions.

Public health authority - means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

Health oversight agency - means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

45 C.F.R. §164.510 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

(b) Standard: *uses and disclosures for involvement in the individual's care and notification purposes*

> *(4) Use and disclosures for disaster relief purposes. A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph (b)(1)(ii) of this section. The requirements in paragraphs (b)(2) and (3) of this section apply to such uses and disclosure to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.*
>
> *(5) Uses and disclosures when the individual is deceased. If the individual is deceased, a covered entity may disclose to a family member, or other persons identified in paragraph (b)(1) of this section who were involved in the individual's care or payment for health care prior to the individual's death, protected health information of the individual that is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity*

45 C.F.R. §164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

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.

(b) Standard: *Uses and disclosures for public health activities.*

(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(iii) 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 FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

(v) An employer, about an individual who is a member of the workforce of the employer, if:

(A) The covered entity is a covered health care provider who 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

(2) To evaluate whether the individual has a work-related illness or injury;

(B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

(C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

(D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of the notice to the individual at the time the health care is provided; or

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

(vi) A school, about an individual who is a student or prospective student of the school, if:

(A) The protected health information that is disclosed is limited to proof of immunization;

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

(C) The covered entity 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 unemancipated minor; or

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

(2) Permitted uses. If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

(d) Standard: *Uses and disclosures for health oversight activities*

(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

(f) Standard: *Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.*

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(g) Standard: *Uses and disclosures about decedents*

(1) Coroners and medical examiners. LifeMed ID may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. LifeMed ID that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

(2) Funeral directors. LifeMed ID may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If

necessary for funeral directors to carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.

(h) Standard: *Uses and disclosures for cadaveric organ, eye or tissue donation purposes. A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.*

(i) Standard: *Uses and disclosures for research purposes*

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that:

(i) Board approval of a waiver of authorization. The covered entity obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by §164.508 for use or disclosure of protected health information has been approved by either:

(A) An Institutional Review Board (IRB), established in accordance with 7 CFR lc.107, 10 CFR 745.107, 14 CFR 1230.107, 15 CFR 27.107, 16 CFR 1028.107, 21 CFR 56.107, 22 CFR 225.107, 24 CFR 60.107, 28 CFR 46.107, 32 CFR 219.107, 34 CFR 97.107, 38 CFR 16.107, 40 CFR 26.107, 45 CFR 46.107, 45 CFR 690.107, or 49 CFR 11.107; or

(B) A privacy board that:

(1) Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;

(2) Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and

(3) Does not have any member participating in a review of any project in which the member has a conflict of interest.

(ii) Reviews preparatory to research. The covered entity obtains from the researcher representations that:

(A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and

(C) The protected health information for which use or access is sought is necessary for the research purposes.

(iii) Research on decedent's information. The covered entity obtains from the researcher:

(A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents;

(B) Documentation, at the request of the covered entity, of the death of such individuals; and

(C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.

(2) Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following:

(i) Identification and date of action. A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;

(ii) Waiver criteria. A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(1) An adequate plan to protect the identifiers from improper use and disclosure;

(2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(3) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

(iii) Protected health information needed. A brief description of the protected health information for which use or access has been determined to be necessary by the institutional review board or privacy board, pursuant to paragraph (i)(2)(ii)(C) of this section;

(iv) Review and approval procedures. A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:

(A) An IRB must follow the requirements of the Common Rule, including the normal review procedures (7 CFR 1c.108(b), 10 CFR 745.108(b), 14 CFR 1230.108(b), 15 CFR 27.108(b), 16 CFR 1028.108(b), 21 CFR 56.108(b), 22 CFR 225.108(b), 24 CFR 60.108(b), 28 CFR 46.108(b), 32 CFR 219.108(b), 34 CFR 97.108(b), 38 CFR 16.108(b), 40 CFR 26.108(b), 45 CFR 46.108(b), 45 CFR 690.108(b), or 49 CFR 11.108(b)) or the expedited review procedures (7 CFR 1c.110, 10 CFR 745.110, 14 CFR 1230.110, 15 CFR 27.110, 16 CFR 1028.110, 21 CFR 56.110, 22 CFR 225.110, 24 CFR 60.110, 28 CFR 46.110, 32 CFR 219.110, 34 CFR 97.110, 38 CFR 16.110, 40 CFR 26.110, 45 CFR 46.110, 45 CFR 690.110, or 49 CFR 11.110);

(B) A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph (i)(1)(i)(B)(2) of this section, and the alteration or waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph (i)(2)(iv)(C) of this section;

(C) A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the protected health information for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and

(v) Required signature. The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.

(j) Standard: *Uses and disclosures to avert a serious threat to health or safety*

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i) *(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and*

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(ii) Is necessary for law enforcement authorities to identify or apprehend an individual:

(A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or

(B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in §164.501.

(2) Use or disclosure not permitted. A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:

(i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or

(ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.

(3) Limit on information that may be disclosed. A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) Standard: *Uses and disclosures for specialized government functions*

(1) Military and veterans activities

(i) Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

(A) Appropriate military command authorities; and

(B) The purposes for which the protected health information may be used or disclosed.

(ii) Separation or discharge from military service. A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

(iii) Veterans. A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

(iv) Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

(2) National security and intelligence activities. A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).

(3) Protective services for the President and others. A covered entity may disclose protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or to for the conduct of investigations authorized by 18 U.S.C. 871 and 879.

(4) Medical suitability determinations. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:

(i) For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12698;

(ii) As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or

(iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) Correctional institutions and other law enforcement custodial situations.

(i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;

(B) The health and safety of such individual or other inmates;

(C) The health and safety of the officers or employees of or others at the correctional institution;

(D) 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;

(E) Law enforcement on the premises of the correctional institution; or

(F) The administration and maintenance of the safety, security, and good order of the correctional institution.

(ii) Permitted uses. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.

(iii) No application after release. 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.

(6) Covered entities that are government programs providing public benefits.

(i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

(l) Standard: *Disclosures for workers' compensation. A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.*

References

Internal

1. Privacy Policy #5, Minimum Necessary: Uses, Disclosures and Requests
2. Privacy Policy #11, Accounting of Disclosures
3. Privacy Policy #17, Uses and Disclosures of Limited Data Sets
4. Privacy Policy #25, Uses and Disclosures Required by Law

External

1. Omnibus Final Rule: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a1031c979126e6440b522063b7bba578&rgn=div5&view=text&node=45:1.0.1.3.78&idno=45%20