

Privacy of Protected Health Information Generally Applicable Policies

April 11, 2003

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Purpose: This Policy outlines the general guidelines and expectations governing requests for, access to, and use and disclosure of Protected Health Information (PHI) in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

1. GENERAL PROVISIONS

Overview: HIPAA was enacted to increase the portability of health insurance, increase the accountability of the health insurance industry, and provide administrative simplification to the health care industry. Administrative simplification includes making it easier and more efficient to share "protected health information" (PHI) electronically.

In conjunction with that, however, significant and far-reaching privacy and security standards are imposed on many entities that use or maintain such information.

Applicability: Washington County has designated itself as a "hybrid covered entity." This means those portions of the County are "covered components" and directly subject to HIPAA. Other parts are not subject to HIPAA; generally, because they are not a health care "provider" and do not have access to or use PHI.

Unless otherwise specified, this Policy applies only to those departments, divisions, or offices designated as HIPAA "covered components" as set forth in Exhibit 'A'. Covered components are prohibited from disclosing PHI to non-covered components, except as permitted by this Policy.

Certain non-covered components may have HIPAA obligations as "business associates," described further in section 13.

HIPAA does not apply to employee PHI held and used by the County as the employer.

Relationship to other laws and policies:

45 CFR 160.201-. 205

This Policy is in addition to all other statutes, administrative rules, or other provisions relating to protected health information. In general, the provision that imposes the greatest degree of confidentiality prevails, except as noted below. Some examples of applicable laws are set forth in Exhibit B. In particular, note that ORS 179.505 imposes restrictions on disclosure that are in some cases stricter than HIPAA.

Nothing in this Policy shall be construed as conflicting with the terms of HIPAA or the HIPAA Privacy Regulations 45 CFR Parts 160 and 164. Those regulations shall be consulted as necessary in conjunction with this Policy.

Implementing Procedures: No later than April 14, 2003, each covered component shall adopt specific policies and procedures implementing this Policy. All such procedures shall be reviewed by the Privacy Officer and, when appropriate, the Office of County Counsel.

Privacy Officer

45 CFR 164.530 (a) (1)

The County shall name a countywide Privacy Officer. Each covered component shall designate a privacy manager. The privacy manager shall be responsible for implementing and ensuring compliance with these general policies and more specific policies and procedures applicable to individual covered components. Employees of the component shall address issues regarding privacy of PHI to their privacy manager whom, when appropriate, shall in turn refer the matter to the County Privacy Officer or County Counsel.

Training:

45 CFR 164.530 (a) (2)

No later than April 14, 2003, each covered component must train all of its employees in HIPAA, these policies, and the more specific policies and implementing procedures of each covered component. The County Privacy Officer must approve training. The detail level may vary depending on the duties and responsibilities of the employee, but must be adequate to help protect against unauthorized disclosures of PHI. Employees who are promoted or have duties reassigned must be trained on any newly relevant policies and procedures. Completion of training must be documented.

2. DEFINITIONS

The following are terms commonly referenced in this Policy. In the event of conflict or absence of a term, the definitions set forth in HIPAA and the implementing federal privacy rules, 45 CFR 160, 164, shall govern:

Business Associate: A person or entity that, on behalf of the County, assists, arranges, performs a service that involves the use of disclosure of PHI. These frequently are contractors that provide support services. Examples include claims administration, quality assurance, billing, legal, accounting, and accreditation. A health care provider that the County retains by contract to provide health care is NOT a business associate. See Sec. 18

Covered Component: A department, division, or other unit of the County that is subject directly to HIPAA and this Policy. See Ex. 'A' for a list.

Health Care: Care, services, or supplies related to the health of an individual. Includes but is not limited to: Preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, counseling, service, assessment or procedure relating to the physical or mental condition, or functional status, or that affects the structure or function of the body.

HIPAA: The Health Insurance Portability and Accountability Act of 1996, as amended. Public Law 104-191.

Individual: The person whose PHI is at issue.

Protected Health Information (PHI): Information in any format that is created, held, or used by a covered component and which relates to an individual's past, present, or future physical or mental health, the provision of health care to the individual, or payment for health care.

Secretary: The Secretary of Health and Human Services (US) or designee.

3. REQUESTS FOR, AND USE OF, PHI BY COUNTY EMPLOYEES

A. PHI shall not be requested or used by County employees in a manner, or for purposes, which would be inconsistent with the policies governing use or disclosure of PHI set forth below.

B. Requests for PHI by County employees shall be limited to the minimum necessary to perform the work for which the PHI is requested. Specific records, rather than the entire file, shall be requested when practicable. De-identified information shall be requested when practicable.

4. USE AND DISCLOSURE OF PHI

PHI held by a covered component shall not be used or disclosed except for the following permissible uses and disclosures. Note that another state or federal law may further restrict these permissible uses and disclosures by the Notice of Privacy Practices (Section 7) or an agreement with the individual (Section 9). Special provisions govern inmates (Section 14), decedents (Section 15), psychotherapy notes (Section 16), and de-identified PHI (Section 17).

A. To the individual

45 CFR 164.502 (a), .524

1. Except for the following, an individual has a right to inspect and copy his or her own PHI, notwithstanding anything to the contrary in state law:

a. Psychotherapy notes. See Sec. 16

b. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

c. Persons in custody (inmates). See Sec. 14

d. Possible danger to others. See Sec. 10.

See Sec. 10, for permissible conditions on access to one's own PHI.

B. To the personal representative of the individual (adult or minor).

See Sec. 12.

45 CFR 164.502 (g)

C. To persons involved in the individual's care, such as family and close friends, as follows:

45 CFR 164.510 (b)

1. Individual present and able to make health care decisions.

Individual consents,

Individual given opportunity to object and does not, or

Lack of objection can reasonably be inferred from the circumstances.

2. Individual not present, incapacitated, or emergency. Disclosure permitted if, in the covered entity's professional judgment in light of common practice, disclosure is in the best interest of the individual and is limited to information directly relevant to the person's involvement. Includes individual's location, general condition, or death – such as in an emergency. Includes permitting the person to pick up PHI on behalf of the individual.

3. To public or private entity authorized by law to assist in disaster relief (e.g. Red Cross) for coordinating permissible disclosures to person's involved in the individual's care. The rules set forth above for disclosures to person's involved in the individual's care apply.

D. To persons described in a properly executed voluntary authorization substantially similar to Form A. Generally, individuals may authorize disclosure of the individual's own PHI for any purpose specified in the authorization.

45 CFR 164.502 (a), .508

E. For treatment to others within the covered components of the County and to another healthcare provider. Use (not disclosure) is subject to minimum necessary standards. See Sec. 5 45 CFR 164.502 (a), .506 (c)

F. For payment to others within the covered components of the county, to another covered entity or healthcare provider. Minimum necessary standards apply. See Sec. 5 45 CFR 164.502 (a), .506 (c)

G. For health care operations within the covered components of the county. With another covered entity only if both the county and the other entity had or have a relationship with the individual, the PHI pertains to that relationship and the disclosure is for:

specified activities including: quality assessment, certain population based activities such as cost containment, protocol development, case management or care coordination, contacting providers or individuals about treatment alternatives, professional competence evaluations, training, credentialing.

fraud and abuse detection and compliance.

Minimum Necessary standards apply. See Sec. 5.

45 CFR 164.502 (a), .506 (c)

H. To a "business associate" of the covered component if the business associate satisfactorily assures that it will appropriately safeguard the information. See Sec. 13 and Form B (business associate agreement.) Minimum Necessary standards apply. See Sec. 5. 45 CFR 164.504 (e)

I. To report child abuse as required by law. Disclosure of PHI for child abuse reporting is not subject to the rules governing adult abuse reporting in paragraph I. Document disclosures. See Sec. 6 45 CFR 164. 512 (B)(1)(ii)

J. To report abuse, neglect, or domestic violence involving adults to a government authority authorized by law to receive such reports.
45 CFR 164.512 (c)

1. If reporting is mandated law, follow the relevant law. Do not disclose more than required by the law.
2. If reporting is not mandated by law, Minimum Necessary standards apply and PHI may be disclosed only if the victim consents or:

in the exercise of professional judgment, disclosure is necessary to prevent serious harm, or
PHI is requested by law enforcement and the official represents that the PHI is not intended to be used against the individual and that failure to disclose the PHI promptly would materially adversely affect a law enforcement action. Document the request.

3. The individual or personal representative shall be informed of all such disclosures unless:

Staff, in the exercise of professional judgment, thinks that informing the individual would place the individual, or another person, at risk of serious harm, or
Staff thinks that the personal representative is responsible for the abuse or neglect and informing the personal representative would not be in the best interests of the individual.
Document disclosures. See Sec. 6.

K. To a public health professional for public health purposes such as preventing or controlling disease, injury, or disability or conducting public health surveillance, investigations, and interventions; reporting vital events such as births and deaths; child abuse reports. Minimum Necessary standards apply to any such disclosure not required by law. See Sec. 5.

Document disclosures. See Sec. 6.
45 CFR 164.512 (B)(1) (i)

L. To a person who may have been exposed to a communicable disease or otherwise may be at risk of contracting or spreading a disease or condition if the disclosure is authorized by law. Minimum Necessary standards apply. See Sec. 5

Document disclosures. See Sec. 5
45 CFR 164.512(B)(1)(iv)

M. Disclosures to other covered components within the County to carry out job duties. Examples include: to Information Services for computer/program troubleshooting; to County Counsel for legal advice; to Archives for records retention purposes. Minimum Necessary standards apply. See Sec. 5.

N. For judicial and administrative proceedings.
45 CFR 164.512 (e)

1. As expressly directed by a court. Generally, administrative orders are not sufficient--consult County Counsel.

2. A civil subpoena, request for production of documents, or similar discovery process not signed by a judge, provided that the person seeking the information represents in writing and provides supporting documentation, that:

The person has made a good faith attempt to provide the individual with written notice about the request and an opportunity to object, the time for objecting has expired and no objections were filed, or any objections were resolved and the request is consistent with that resolution; or

The person has obtained or is in the process of obtaining a qualified protective order that limits use of the PHI to the dispute at issue and requires return or destruction of the PHI when done.

Note: County Counsel must review all subpoenas for PHI. Document disclosures. See Sec. 6.

O. To law enforcement if:
45 CFR 164.512 (f)

1. Required by law. Only disclose what is required.

2. In compliance with the express terms of a court ordered warrant, subpoena, or summons; a grand jury subpoena; or other process authorized by law, provided that:

The PHI is relevant and material to a legitimate law enforcement inquiry;

The request is specific and limited in scope to the extent reasonably practicable for the purpose for which it is sought; and

De-identified information could not reasonably be used.

Note: County Counsel must review all subpoenas for PHI. Document all disclosures.

3. In response to a request for assistance in identifying or locating a suspect, fugitive, material witness, or missing person, the following may be disclosed:

Name and address

Date and place of birth

Social Security Number

ABO blood type and rh factor

Type of injury

Date and time of treatment or death

Distinguishing physical characteristics

This exception does not permit disclosure of DNA or DNA analysis, dental records or typing, samples or analysis of body fluids or typing.

Note: The County is not in violation of HIPAA if an employee who is a victim of a crime discloses any of the above-listed PHI relating to the suspected perpetrator to law enforcement. 45 CFR 164.502 (j) (2)

4. In response to a request for PHI about an individual who is or is suspected to be a victim of a crime if:

The individual consents. Document.

The individual's consent cannot be obtained due to capacity or other emergency circumstances and the law enforcement official represents that:

The PHI is necessary to determine whether a violation by a person other than the victim occurred and the PHI is not intended to be used against the victim;

Immediate law enforcement activity that depends on the PHI would be materially and adversely affected by waiting; AND

The disclosure is in the best interest of the victim, in the professional judgment of the component.

5. Disclosure of PHI about a decedent is necessary to alert enforcement, if there is a suspicion that death may have resulted from criminal conduct.

6. A good faith reason exists to believe that PHI constitutes evidence of a crime occurring on the County property.

7. Emergency healthcare provider may disclose PHI to law enforcement, if necessary to alert them to a crime, its location, or the perpetrator.

Minimum Necessary standards apply unless law requires the disclosure. See Sec. 5.

Document disclosures. See Sec. 6

P. To healthcare oversight agencies for oversight purposes, including government benefit programs and civil rights law compliance. Disclosure not permitted if:

1. the individual is the subject of the investigation, and

2. the investigation arises out of or is directly related to some purpose other than to a claim for, the receipt of, or the individual's qualifications for health care or public benefits and services.

Document disclosures. See Sec. 6

45 CFR 164.512 (d)

Q. Avert a serious threat to health or safety.
45 CFR 164.512 (j)

1. If consistent with applicable law and ethical standards and there is a good faith belief that the use or disclosure is:

a. Necessary to prevent or lessen a serious and imminent threat to health or safety of a person or the public and the disclosure is to a person reasonably able to prevent or lessen the threat (including the target of the threat), or

b. Necessary for law enforcement to identify or apprehend an individual where the individual has admitted participation in a violent crime reasonably believed to have caused serious physical injury. Only disclose the statement and the PHI listed in O. .3. above. Use or disclosure is not permitted, if the information was obtained by the covered component:

During treatment for the propensity to commit the criminal conduct at issue, counseling, or therapy, or

Through a request by the individual for referral to treatment for the propensity, counseling, or therapy.

c. Necessary for law enforcement to identify or apprehend an individual who has escaped from lawful custody. Minimum Necessary standards apply. See Sec. 5.

Document disclosures. See Sec. 6

R. Government Public Benefits Programs
45 CFR 164.512 (k) (6)

A government entity that is a health plan providing public benefits may disclose PHI regarding eligibility and enrollment with another government agency administering a government public benefit program, if the sharing (including a shared database) is authorized by statute or administrative rule. Minimum Necessary standards apply. See Sec. 5.

A covered government entity that administers a public benefit program may disclose PHI to another covered government entity that provides public benefits to a same or similar population to the extent necessary to coordinate and improve the administration and management of the public benefit programs.

S. Miscellaneous Governmental Purposes.
45 CFR 165.512 (k)

1. As required by the federal Department of Health and Human Services, Minimum Necessary does not apply.

2. Disclosure of PHI of armed forces personnel deemed necessary by the appropriate military command.
3. National and presidential security and intelligence activities authorized by the National Security Act (50 USC 401, et. seq.).
4. Whistleblowers may be protected against a claim of violation of HIPAA, if they qualify under 45 CFR 164.502 (j)(1).
5. To the FDA, if the individual is subject to FDA jurisdiction pursuant to 45 CFR 164.512 (b)(iii).
6. For research pursuant to 45 CFR 164.512 (i).
7. Authorized and to the extent necessary to comply with worker's comp laws. (Note: HIPAA does not apply to records of current county employees.)

Document all of these disclosures, except 3. See Sec. 6

5. "MINIMUM NECESSARY" AND VERIFICATION STANDARDS

45 CFR 164.502 (b), .514 (d)

A. Employees shall make reasonable efforts to avoid requesting, using, or disclosing an entire PHI file and shall only request, use, or disclose the minimum necessary PHI to legitimately accomplish the intended purpose.

1. This Minimum Necessary determination is not required for:

- Disclosure to or requests for PHI from a treatment provider, for treatment purposes.
- Minimum Necessary standards apply to use of PHI for treatment.
- Disclosure to the individual who is the subject of the PHI (including the personal representative)
- Disclosure or use pursuant to a specific authorization from the individual.
- Disclosure to the Department of Health and Human Services required under Section 4. R. for enforcement purposes.
- Disclosure, requests for or use of PHI mandated by other law.

2. Minimum Necessary standards always govern requests for, use and disclosure of PHI for:

- payment or non-treatment related health care operations, including internal disclosures
- incidental disclosures to other covered components within the County to carry out job duties
- permitted internal communications (e.g. treatment) regarding psychotherapy notes.

B. Rather than make their own minimum necessary determination, staff may rely on an assurance from the following that they are requesting only the "minimum necessary" PHI:

A public official requesting PHI for a permitted disclosure.

Another covered entity.

A healthcare professional working for a business associate of the County, as long as it is for a permitted disclosure.

Researchers with appropriate documentation from the Institutional Review Board or Privacy Board.

C. Each covered component shall identify those employees or classes of employees who need access to PHI, the category or categories of PHI to which access is needed and any conditions appropriate for such access. Each covered component shall adopt internal policies and procedures to reasonably limit employee authority to request, use, and disclose PHI to those employees and categories of PHI so identified.

D. Each covered component shall adopt internal policies and procedures governing the routine requests for, uses, and disclosures of PHI reasonably necessary to carry out the responsibilities of the component.

E. Each covered component shall adopt internal policies and procedures for identifying, considering, and deciding on non-routine request to receive, use, or disclose of PHI. These policies at a minimum shall provide for review by the component's Privacy Manager to determine if the criteria for disclosure are met, verifying the identity and authority of requesters if not known to staff and appropriate documentation of all non-routine requests and disclosures. Release only those portions of PHI that are justified under this review.

F. Unless the individual is present and able to object, no disclosure of PHI shall occur without first verifying the identity of the person and the basis for the person's entitlement to receive the PHI. Unless expressly provided otherwise, the covered component may relay on whatever oral statements, documentation, or other information it in good faith and in the exercise of professional judgment believes necessary under the circumstances. If reasonable under the circumstances, the identity and authority of a public official or a person acting on behalf of the public official may be verified by presentation of agency identification, badge, a request on agency letterhead, contract, or other written authorization. 45 CFR 164.420 (h)

6. DOCUMENTING AND ACCOUNTING FOR DISCLOSURES
45 CFR 165.528

A. HIPAA requires that certain disclosures must be documented and that an individual has a right to an accounting of those disclosures. These are:

1. To report child or other abuse, neglect, or domestic violence.

Note: State law allows for keeping confidential the name of the person who reported child abuse.

2. To a public health professional for public health purposes.

3. To health oversight agencies (e.g. audits, licensing and disciplinary actions, investigations).

4. For judicial and administrative proceedings, including all court orders and subpoena's.

5. To law enforcement regarding:

crime on premises

emergencies when crime suspected

wound or injury reports

identifying or locating a suspect or fugitive

6. Reports about decedents to medical examiners, funeral homes.

7. Workers' Compensation (except regarding county employees).

8. To correctional institutions—unless the individual is in custody.

9. To the military.

10. To the FDA.

11. For research purposes.

12. To a person who may have been exposed to a communicable disease.

13. Any unlawful, unauthorized, or impermissible disclosure.

14. Disclosure or use of psychotherapy notes.

Disclosures to or by a Business Associate that fall within this list must be documented. The County, not the Business Associate, is legally responsible for providing the accounting.

B. Examples of common permitted disclosures that do not need to be documented or accounted for (including to or by a Business Associate) are:

1. For treatment, payment or healthcare operations.

2. To the individual or authorized by the patient.

3. Incidental disclosures both within and outside the covered component.
4. To person's involved in the individual's care (e.g. family).
5. National security purposes.
6. To correctional institutions, if the person is in custody.

When in doubt, document.

C. Persons should be encouraged to put requests in writing for an accounting of disclosures but this cannot be required. Retain all written requests for an accounting. Requests may extend back up to six (6) years. Accountings must be provided within sixty (60) days of the request. The covered component may grant itself one 30-day extension if it does so within the original 60 days and provides the individual with a written explanation. One accounting per each 12-month period is free. Further requests may be charged a cost-based fee that must be quoted in advance of complying.

D. The disclosure documentation and the accounting each must include:

1. Date of disclosure,
2. Name and address of entity or person that received the PHI,
3. Brief description of the PHI disclosed, and
4. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure.

For multiple disclosures to the same person, the accounting need only fully document the first one, together with a description of the frequency, periodicity, or number of subsequent disclosures and the date of the last disclosure.

Note: Disclosures for certain research, to the US DHHS and for national security purposes, have special rules governing accountings.

E. The covered component must temporarily suspend the individual's right to an accounting of a disclosure to a health oversight or law enforcement agency, if the agency states that providing the accounting would be reasonably likely to impede the agency's activities.

1. If the statement is in writing, it must specify a time and that time must be honored.
2. If the statement is oral, it must be documented and is valid for no longer than 30 days, unless a written statement specifying a longer time is received.

7. NOTICE OF PRIVACY PRACTICES

45 CFR 502 (i), .520

A. Except for inmates, every person has a right to notice of:

1. The uses and disclosures of PHI that may be made by the covered component;
2. The individual's rights as regards his or her PHI;
3. The covered component's legal duties with respect to PHI.

B. Form C is a standard Notice of Privacy Rights (NPR) containing the required elements. This notice may be modified substantively only with approval of County Counsel. In addition, each covered component shall add:

1. A description, containing at least one example, sufficient to place the individual on notice of the other types of requests for, uses, and disclosures likely to be made.
2. Any specific prohibitions or material PHI restrictions imposed on the covered component by any other law.
3. Contact information for the person designated to receive complaints.

C. The NPR promptly shall be modified to reflect any material change in the permissible uses, disclosures, individual rights, the covered component's duties, or other privacy practices.

D. All covered components that have public access to workplaces shall post a notice stating that the complete NPR is available on request.

E. All covered components that have a direct treatment relationship with an individual shall:

1. Provide the NPR directly to the individual on the first day the service is provided. In an emergency treatment situation, this may be delayed until the first reasonably practicable opportunity.
2. Have extra copies for individuals to take.
3. Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt and document any refusal.

If the NPR is subsequently changed, copies must be made available but need not be directly provided and no new acknowledgment is required.

8. AUTHORIZATION TO USE OR DISCLOSE

45 CFR 164.508

A. Use or disclosure of PHI may occur only if permitted in this Policy or authorized by the individual. (For example, marketing disclosures require an authorization.) Generally, an individual (or a personal representative) may authorize any disclosure of his or her own PHI.

B. Treatment, payment, or eligibility for health care benefits cannot be conditioned on the individual providing an authorization to disclose, except that a health plan may require one prior to enrollment to make eligibility or risk determinations.

C. A valid authorization must be in plain language and contain all of the elements specified in FORM A. It must be separate from all other forms.

D. An authorization may be revoked in writing at any time, but revocation does not affect acts already taken in reliance on the authorization. An authorization is not valid if the covered component knows it has expired, been revoked, or any material information is known to be false.

E. Retain the original authorization and provide a copy to the individual.

G. Psychotherapy notes require a separate authorization.

9. RIGHT TO REQUEST A USE OR DISCLOSURE RESTRICTION

45 CFR 164.502 (c), .522 (a)

A. Individuals, including inmates, must be given an opportunity to request that use or disclosure of PHI for treatment, payment, or health care operations or disclosure of PHI to friends and family members be restricted.

1. The request may be denied for any non-discriminatory reason.

2. If granted, the request must be honored, except in case of medical emergency and, even then, the recipient of the information must be asked to not further use or disclose the PHI.

3. The agreement to restrict use and disclosure may be terminated if:

the person requests in writing (or orally if documented)

or

the covered entity terminates in writing--but the restriction remains in effect for previously received or created PHI.

4. Grant or denial of a restriction must be documented.

B. Reasonable requests to receive PHI communications by specified confidential alternate means or to a specified alternate location must be accommodated if;

1. In writing.

2. The individual provides reasonable information about how payment will be handled.

45 CFR 164.502 (h). .522(b)

10. RIGHT OF INDIVIDUAL TO ACCESS PHI

45 CFR 164.502 (a), 164.524

A. An individual has a right to access, inspect, and copy his or her own PHI except:

1. Psychotherapy notes.

2. PHI compiled for use in or reasonable anticipation of a criminal, civil, or administrative proceeding.

3. An inmate's right to copy PHI (but not the right to inspect) may be denied, if copying would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or others in the facility or responsible for transporting the inmate.

4. If the PHI were permissibly obtained in confidence from someone other than a provider and disclosure would reveal the source.

5. Certain federal law grounds. These grounds for denial are not subject to review under HIPAA.

B. The right to access may be denied on the following grounds, if the individual is given a right to contest denial and a licensed health care professional determines that:

1. access would be reasonably likely to endanger the life or physical safety of the individual or another person,

2. another person (other than a healthcare provider) is mentioned in the PHI and access would likely cause substantial harm to that person, or

3. a request from a personal representative likely would result in substantial harm to the individual or another person.

C. A request for access must be acted on within 30 days as follows:

1. Granted in whole or in part, by providing access to, or mailing a copy of the PHI, in the form or format requested if readily producible or, if not, by hard copy. A summary may be provided if agreed to in advance by the individual. If the same PHI is in multiple locations, only one access point or copy need be provided.

2. Denied in whole or in part by sending notice in writing and containing:

the basis for denial

a description of any applicable review rights

a description of the complaint procedures.

3. If the covered component does not have the PHI requested, inform the individual of where to direct his or her request, if known.

D. If a review of a denial is requested, it must be done by a licensed healthcare professional designated by the covered component, who was not involved in the initial denial. This professional's decision is final and binding

11. RIGHT OF INDIVIDUAL TO AMEND PHI

A. An individual may make written request that PHI be amended, stating the reasons for the request.

B. A request to amend must be acted upon within 60 days by:

1. Granting the request in whole or in part by

at a minimum, appending or providing a link to the amendment.

informing the individual.

making reasonable efforts to provide the amendment to persons identified by the individual and any other person known to have the information who may have relied, or reasonably could rely, on the information.

2. Denying the request in whole or in part in writing, with:

the basis for denial.

how to file a complaint with the covered component or the Secretary of US DHHS.

information on how to submit a written statement disagreeing with the denial.

C. The grounds for denial are that the PHI or record:

1. Was not created by Washington County, unless the individual provides a reasonable basis to believe that the person who created the PHI is no longer available to act on the requested amendment;
2. Is not held by the covered component.
3. Is PHI that the person does not have a right to inspect, e.g. psychotherapy notes, information prepared for criminal, civil or administrative proceedings; or
4. Is already accurate and complete.

D. If the request is denied, the request for amendment, denial, statement of disagreement, and any rebuttal created by the covered component must be appended or linked to the PHI. These must be included with any subsequent disclosure. Special rules apply to electronic standard transaction codes.

E. If the covered component receives an amendment from another covered entity; it also must append or link the amendment to the PHI.

F. Each covered component must document the name and title of all persons authorized to review and decide on amendment requests.

12. PERSONAL REPRESENTATIVES

45 CFR 164.502 (g)

A. Personal representatives have all of the rights of the individual (e.g. to a notice of privacy rights, access, and accounting)—but only within the scope of the authority held by the personal representative. For example, a person with a limited healthcare power of attorney to decide whether to provide life support has rights only as regards PHI relevant to that decision. Documentation of the authority is required.

B. For adults and emancipated minors, a personal representative is only a person who has documentation providing authority to make decisions regarding health care on behalf of the individual.

C. For non-emancipated minors, state law determines if the personal representative is the parent, guardian, or other person legally standing in as the parent (legal custody).

1. State and federal law govern when PHI is required to be disclosed to the parent, may be disclosed or when access or disclosure is prohibited.

2. Unless otherwise provided by state law, a parent is not the personal representative of a minor for purposes of HIPAA when:

- a. the minor is authorized by law to consent or obtain the health care services without another person's permission.
- b. someone else other than the personal representative, such as a court, authorized the health care services.
- c. the parent has agreed to a confidential relationship between the minor and the provider.

3. If state law is silent on who has legal custody, disclosure is permissible only if approved by a licensed healthcare professional.

45 CFR 164.502 (g)(3)(ii)(C)

D. Disclosure to any personal representative may be denied if there is:

- a. Inadequate documentation, or
- b. Reasonable belief that:

the individual has been subjected to domestic violence, abuse, or neglect by the personal representative,

treating the person as the personal representative could endanger the individual, or in the exercise of professional judgment it would not be in the best interest of the individual. All such decisions must be documented.

E. For deceased persons, the personal representative is the person authorized by state law to act on behalf of the deceased or the estate. Documentation required. See Sec. 6

13. BUSINESS ASSOCIATES

A. Each covered component shall identify its Business Associates and ensure that all contracts entered into or amended on or after October 15, 2002, include business associate provisions substantially similar to those set forth in Form B. Contracts entered into prior to October 15, 2002, may continue without change until amended or April 14, 2004, whichever first occurs.

B. PHI shall not be disclosed to a business associate except in accordance with this Policy and the terms of the business associate provisions.

C. The covered component privacy manager shall be informed promptly if there is reasonable grounds to think that the business associate is failing to abide by its responsibilities or is failing to cooperate with the covered component.

D. Examples of situations where a business associate agreement is not required include:

Disclosure to a treatment provider for treatment purposes.

A health care provider submitting a claim to a health plan for payment.

Incidental/accidental disclosures to persons or organizations that do not use PHI, e.g. a janitorial service or remodeler—provided that the covered component has taken reasonable steps to minimize the risk of disclosure.

Conduits for PHI, such as the US Postal Service, Fed Ex, couriers.

Among covered entities participating in an organized health care arrangement (by IGA or contract).

From one governmental covered entity administering a public benefits program to another governmental covered entity administering a public benefits program serving the same or similar populations, to the extent necessary to coordinate or improve administration of the benefit programs.

14. INMATES

A. Inmates are adults or juveniles required to stay in a prison, jail, correctional center, halfway house, or similar facility, e.g., the Jail, Community Corrections Center, Harkins House. Persons released from the facility, including on parole or probation are not inmates and their PHI is treated as that of any other individual.

B. Inmate PHI is somewhat less protected by HIPAA:

1. A covered component may disclose PHI about an inmate to any correctional facility or law enforcement official having custody over the inmate, provided that the facility or official represents that the PHI is necessary for:

Providing health care to the inmate.

The health and safety of the inmate or other inmates.

The health and safety of employees or others at the facility.

The health and safety of persons transporting inmates.

The needs of law enforcement at the facility.

Administration and maintenance of safety, security, and good order at the facility.

2. Inmates do not have a right to a Notice of Privacy Practices and correctional facilities do not need to post one.

15. DECEDENTS

5 CFR 164.502 (f), 512 (g) (h)

A. Generally, protection of PHI survives death.

B. In addition to the other permissible disclosures listed above, it is permissible to disclose PHI about a decedent to:

1. Coroners and medical examiners to identify a deceased person, determine cause of death, or other purpose authorized by law. The medical examiner may only use or disclose PHI as permitted in these guidelines.
2. Funeral directors as necessary to assist them in carrying out their duties. This may be prior to, and in reasonable anticipation of, death.
3. To organ procurement organizations to facilitate transplant donations.

16. PSYCHOTHERAPY NOTES

45 CFR 164.508 (a) (2)

A. Somewhat narrowly defined as:

1. Included: notes of a mental health care professional documenting or analyzing the contents of a conversation during a private, joint, group, or family counseling session that are separated from the individual's medical record.
2. Excluded--and therefore treated as regular PHI: medication prescription and monitoring, session start/stop times, modalities and frequencies of treatment, results of clinical tests and any summary of a diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date.

B. Requests for, use, and disclosure of psychotherapy notes must be documented and are permitted only with a separate written authorization of the individual, except:

1. Use for treatment purposes by the mental health professional that created the notes.
2. Use by the covered component for supervised internal training to improve counseling skills.
3. To defend against a legal action brought by the individual.
4. When required by law.

5. When required as part of oversight of the practitioner.
6. When needed by a coroner or medical examiner.
7. When needed in an emergency to avert a serious and imminent threat to health or safety.
8. When required by US HHS.

C. Individuals do not have a HIPAA right to access their own psychotherapy notes. Such access may be denied for any legitimate reason.

D. Psychotherapy notes must be kept separate from any other PHI.

17. DE-IDENTIFIED HEALTH INFORMATION

45 CFR 164. 502 (d), .514 (a) (b)

A. Health information that has been de-identified, i.e., does not identify an individual, nor provide a reasonable basis to identify an individual, is not considered PHI. Covered components may use PHI to create de-identified health information.

B. Covered components may determine that health information is de-identified only if:

1. the covered component has designated the person as meeting the qualifications specified in 45 CFR 164.514 (b) (1) and that person applies the standards set forth therein to the information, or
2. the covered component removes all of the identifiers specified in 45 CFR 164.514 (b) (2)

C. Covered components may assign a code or other means of record identification to allow de-identified information to be re-identified by the covered component only if:

1. the code is not derived from or related to information about the individual or otherwise capable of being translated so as to identify the individual, and
2. the code is not used for any impermissible purpose or disclosed.

18. ADMINISTRATIVE AND PHYSICAL SAFEGUARDS

45 CFR 164.504 (c)

HIPAA recognizes that certain incidental or accidental internal disclosures of PHI in the workplace are inevitable. They are not a violation if the entity has adequate safeguards in place.

A. Each covered component shall adopt policies and procedures to minimize disclosure of PHI, inadvertently or otherwise, to non-covered components of the County or anyone else except for permitted disclosures. These shall include, but not be limited to:

1. Separately identify and maintain files containing PHI in secure areas; limit access to those having a permissible purpose; organize files to minimize risk of inadvertent disclosure of PHI components; disclosure authorizations or restrictions shall be readily visible.
2. Files containing PHI that shall be clearly designated as such. No PHI shall be visible on the cover.
3. Files eligible to be destroyed shall be promptly shredded and destruction documented.
4. Verbal exchanges shall be done in such a way as to minimize the risk of others overhearing PHI. Enclosed office, conference rooms, or other secure areas shall be used when feasible.
5. Computer screens containing PHI shall be positioned or shielded to minimize access and employ automatic screen savers. Computers with access to PHI shall be secured when not in use.
6. Use of emails to transmit PHI shall be minimized unless encrypted. Safeguards must be in place to prevent disclosure to unauthorized recipients. De-identify PHI when feasible.
7. Access to databases, emails, or other electronic information shall be restricted to those members of the covered component, business associates, providers, or others having a legitimate and permissible need for access.
8. Files or documents containing PHI shall be not be left unattended or on display when not in use.
9. For fax transmittals, confirm that the proper number has been dialed and that only the proper recipient will receive the fax. Ensure that PHI received by fax is accessible only to authorized employees and is promptly dealt with.
10. Covered component functions and employees shall be physically segregated from non-covered components and employees to the extent feasible.

11. Adopt safeguards to help ensure that employees who perform both covered and non-covered functions adequately delineate and compartmentalize their work.

B. No less than once each year, each covered component shall conduct a self-assessment of disclosure risks and take such steps as are necessary to address problem areas. This assessment and a description of remedial steps shall be provided to the County Privacy Officer.

19. COMPLAINTS

A. Each covered component shall designate one or more persons to be responsible for receiving and addressing complaints regarding violations of these Policies, the component's specific policies and procedures, HIPAA or the implementing federal regulations.

B. A complainant shall be informed that:

He or she is encouraged, but not required to put the complaint in writing;
He/she has the option of filing the complaint with the County Privacy Officer. The complaint shall be filed directly with the County Privacy Officer, if it involves the person responsible for receiving complaints;
That he/she may to bypass the County complaint process and file the complaint directly with the Secretary of DHHS; and
That the law and county policy prohibits retaliation against any complainant.

C. The person receiving the complaint shall document:

The name and contact information for the complainant;
The specific nature of the complaint, including sufficient information to investigate and address the complaint;
That the information described above was provided; and
The resolution of the complaint, including any changes in policies or procedures and any actions taken in response to the complaint.

D. The person receiving the complaint shall investigate the circumstances and either deny the complaint or take such actions as are reasonably necessary to address the complaint, including but not limited to mitigating any adverse impacts of an impermissible request for, use of, or disclosure of PHI. If the person receiving the complaint does not have authority to resolve the matter, the person shall make a recommendation to an appropriate manager.

E. Complaints should be addressed within 30 days of receipt. The County Privacy Officer shall be provided the information described in paragraph C no later than 30 days after receipt of the complaint. In the event the complaint was denied or the complainant is not satisfied with the resolution, the County Privacy Officer shall review the matter and

determine whether the action taken was appropriate and may implement an alternate course of action. The complainant shall be informed of any County Privacy Officer decision.

Note: Whistleblower Protection.

State law affords certain protections to "whistleblowers." This may require that the complainant's identification be kept confidential. The person receiving the complaint shall promptly notify County Counsel if, due to the nature of the complaint, statements from the complainant or any other reason, the person thinks the complainant may qualify as a "whistleblower."

See the County's "Reporting of Improper Governmental Conduct" policy at:
<http://county/indices/depts/cao/whstlblw.htm>

20. AMENDMENTS TO POLICIES AND PROCEDURES
45 CFR 164. 530 (i)

A. This Policy, implementing policies and procedures and all forms, shall be promptly revised to reflect changes in the law.

B. This Policy may be amended only by the County Administrator, who must first consult with the County Privacy Officer and County Counsel. The component's privacy manager must approve amendments to the covered component's implementing privacy policies and practices.

C. Amendments that do not materially affect a privacy practice described in the Notice of Privacy Practices may be made at any time, but cannot go into effect until put into writing.

D. Amendments that materially affect a privacy practice described in the Notice of Privacy Practices:

Shall specify whether the change applies to information created or received prior to the change.

May only be implemented after the Notice of Privacy Practices has been revised.

21. DOCUMENT RETENTION
45 CFR 164. 530 (j)

A copy of all policies, procedures, forms, accounting of disclosures, complaints and responses, disclosure authorizations and restrictions and all other items required to be documented under these Policies shall be retained for six years, or the period specified in the State Archival rules, whichever is longer.

22. NO RETALIATION / NO WAIVER OF RIGHTS

45 CFR 165.430 (g) (h)

A. No employee shall intimidate, threaten, coerce, discriminate against, or take other retaliatory action against:

Any individual for exercising any right or participating in any process under these Policies, including filing a complaint;

Any individual or other person for filing a complaint with the Secretary, testifying, assisting, or participating in an investigation or compliance review, proceeding, or hearing; or

Any individual or other person opposing any act or practice that unlawfully violates these Policies provided that it is based on a good faith belief that the act or practice is unlawful, the manner of opposition is reasonable, and does not involve the impermissible disclosure of PHI.

B. No individual shall be required to waive his or her rights provided by HIPAA, 45 CFR 160.306, or 45 CFR part 164 as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

23. EMPLOYEE SANCTIONS

45 CFR 164.530 (c)

A. Failure to comply with these Policies, or the implementing policies and procedures, shall be grounds for discipline, up to and including termination. Any such discipline shall be documented and may be disclosed to the Secretary.

B. No employee shall be disciplined for disclosing information that the person believes in good faith to constitute evidence that a covered component has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered component potentially endangers one or more patients, workers, or the public, provided that the disclosure is to:

a healthcare oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered component or to

an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered component, or
an attorney retained by or on behalf of a person for the purpose of determining the legal options of the person with regard to the alleged improper conduct.
C. No employee, who is the victim of a criminal act, shall be disciplined for disclosing PHI to a law enforcement official, provided that the PHI:

is about the suspected perpetrator of the criminal act; and
is limited to: name and address, date and place of birth; social security number; ABO blood type and rh factor; type of injury; date and time of treatment or death; and a description of distinguishing physical characteristics such as height, weight, gender, race, scars, tattoos. This does not include DNA, dental records, samples or analysis of body fluids or tissue. 45 CFR 164.502 (j), 512 (f) (2)
HIPAA Policies and Procedures

This policy shall be effective April 14, 2003.

Authorized by:

Charles D. Cameron
County Administrator

April 11, 2003

Dated