

## Uses and Disclosures of Health Information- General Rules

### **Purpose:**

To set forth the policy and procedures of WVU Physicians of Charleston (WVUPC) regarding the use and disclosure of protected health information (PHI).

### **Standard:**

A signed authorization must be obtained from an individual or an individual's legal representative prior to using or disclosing the individual's PHI, where such use or disclosure is for purposes other than treatment, payment or health care operations, unless otherwise permitted or required by law.

### **Policy:**

WVUPC respects patients' rights to privacy and confidentiality. The organization's goal is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and wellbeing.

This policy describes the permitted and restricted uses and disclosures of protected health information (PHI), using only the minimum information necessary to accomplish the purpose for the use (or disclosure). The policy includes uses and disclosures that require patient authorization, and permitted and required uses and disclosures without the patient's authorization.

Questions regarding this policy should be directed to the WVUPC Privacy Officer (304-347-1354), or to the Director of Health Information Management (304-556-3827).

### **DEFINITIONS:**

The **Designated Record Set (DRS)** contains Protected Health Information (PHI) that is the property of WVUPC. The designated record set includes specific content identified as designated medical record content and designated billing record content about individuals. This information is maintained by WVUPC in order to make decisions about individuals.

**Treatment** involves using and disclosing medical information to a physician or other health care provider in order to provide treatment to the patient. This includes coordination of care with other health care providers and health plans, consultation with other providers, and referral to

other providers related to care of the patient, including non-WVUPC providers who participate in a Health Information Exchange (HIE) with which WVUPC also participates, unless the patient has specifically opted out of participating in the HIE.

**Payment** involves using and disclosing medical information to obtain payment for services provided to the patient. Payment includes submitting claims to health plans and other insurers, justifying charges for and demonstrating the medical necessity of the care delivered to the patient, determining the patient's eligibility for health plan benefits for care furnished, obtaining precertification or preauthorization for treatment or referral to other health care providers, and participating in utilization review of the services provided to the patient. WVUPC may disclose medical information to another health care provider or entity, subject to federal and state Privacy Rules, in order to obtain payment.

**Note: Out-of-Pocket Payment:** If so directed by the patient, health information relating to an encounter that is paid for personally may not be shared with an insurance company. It is the patient's responsibility to inform other providers who may receive copies of their medical records that they may not share such information with the insurer either.

**Health Care Operations** refers to using and disclosing medical information in connection with WVUPC operations. Health care operations may include but are not limited to the following:

1. Quality assessment and improvement activities.
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider accreditation, certification, licensing or credentialing activities.
3. Medical Review activities.
4. Legal services and auditing, including fraud and abuse detection and compliance.
5. Business planning and development.
6. Business management and general administrative activities, including management activities relating to privacy, customer service, resolution of internal grievances, and creating de-identified medical information or a limited data set.

**PROCEDURES:**

**A. Permitted Uses and Disclosures of PHI**

1. **WVUPC may use and disclose PHI for its own treatment, payment and healthcare operational purposes.**
2. **WVUPC may also disclose PHI to another covered entity for the treatment, payment and health care operations of the other covered entity with the following**

limitations:

- i. Each entity has or had a relationship with the individual who is the subject of the information;
  - ii. The PHI exchanged pertains to that relationship;
  - iii. The purpose is for operations that include: quality assessment/improvement activities; population-based activities relating to improving health or reducing health care costs; case management and care coordination; certification; conducting training programs; accreditation; licensing or credentialing activities; health care fraud/abuse detection or compliance.
  - iv. If the patient has paid for the service out-of-pocket, he/she may request that the information not be shared with his/her insurance company
3. **WVUPC may disclose PHI on authorization from the patient.** If a patient gives WVUPC authorization, the patient may revoke it in writing at any time. Unless the patient gives WVUPC a written authorization, WVUPC cannot use or disclose their medical information for any reason except those described in the WVUPC Notice of Privacy Practices.
4. **WVUPC may disclose PHI to a family member, friend or other person to the extent necessary to help with the patient's health care or with payment for health care.**
- a. WVUPC may use or disclose the patient's name, hospital location, and general condition or death to notify, or assist in the notification of (including identifying or locating) a person involved in the patient's care.
  - b. WVUPC may also disclose medical information to whomever the patient has given WVUPC permission for such disclosure.

**Before WVUPC may disclose medical information to a person involved in the patient's health care or payment for health care, it will provide the patient with an opportunity to object to such uses or disclosures.** If the patient is not present, or in the event the patient is incapacitated or in an emergency, WVUPC will disclose the patient's medical information based on professional judgment of whether the disclosure would be in the patient's best interest.

5. **For Disaster Relief:** WVUPC may disclose a patient's medical information to a public or private entity authorized by law to assist in disaster relief efforts.
6. **For Health Related Services:** WVUPC may use a patient's medical information to contact the patient with information about health-related benefits and services or about treatment alternatives that may be of interest to the patient. WVUPC may also disclose medical information to a business associate to assist in these activities.

7. **Fundraising**: For fundraising purposes, WVUPC may use demographic information, including age, date of birth, gender, home address, phone number, type of insurance and limited clinical information such as date of treatment, department and physician that provided services and outcome information, provided that the patient has an opportunity to opt out of any such fundraising related uses at any point. If a patient does opt out, no further communication can be made for fundraising purposes unless the opt-out is rescinded.
8. **To Business Associates (BA's)**: WVUPC may disclose a patient's medical information to a company or individual who has contracted with WVUPC to perform functions or activities to, or on behalf of WVUPC, with access to a patient's health information needed by the BA in order to provide the contractual services.
9. **For Public Benefit**: WVUPC may use or disclose a patient's medical information as authorized by law for certain purposes deemed to be in the public interest or benefit, e.g., public health activities including disease and vital statistics reporting, child abuse reporting, adult protective services and FDA oversight; cancer registry, trauma registry, birth registry, in response to court and administrative orders and pursuant to subpoenas.

**B. Non-Permitted Uses and Disclosures of PHI**

1. Employees are not permitted to access their own health information using their assigned security credentials in any WVUPC or WVU Hospital systems. Personal access by employees to such information is limited to access via the MyWVUchart application.

Employees are encouraged to sign up for MyWVUChart at [MyWVUChart.com](http://MyWVUChart.com). MyWVUChart provides access to test results, procedure information, past and future appointments, ability to request an appointment, and secure messaging with the employee's physician and other benefits.

2. Personal access to any other individual's PHI, (i.e., friend, relative, spouse, child) for purposes not directly related to the employee's job duties, without having obtained proxy access rights in the MyWVUChart application, is strictly prohibited.

Employees can request **proxy access** to a family member's record through processes approved by the Health Information Management Department.

3. **Minors**:
  - a. For children under the age of 12, a parent must sign a Consent for Proxy form that is available at WVUPC clinical locations via the Epic system.

- b. For minors between the ages of 12 -18, the minor must sign a Consent for Proxy form that is available at WVUPC clinical locations via the Epic system.
4. **Adults (i.e. spouse, parents, friends)** must sign a Consent for Proxy form that is available at WVUPC clinical locations via the Epic system.

**C. Sale of PHI: No Payment for PHI**

1. Indirect and direct remuneration for a disclosure of PHI without the individual's authorization is strictly forbidden. The authorization document must also explain whether PHI can be further exchanged for remuneration by the downstream entity receiving the PHI (e.g., pharmacy, laboratory, etc.). There are exceptions where a covered entity is permitted to receive remuneration for disclosures. These include:
  - a. For public health activities;
  - b. For research, where the price charged reflects the cost of preparation and transmittal of the data;
  - c. For treatment;
  - d. For the sale, merger or transfer of the covered entity (which is a health care operation);
  - e. To a business associate to perform functions for the covered entity;
  - f. To an individual who wants copies of his or her PHI; and
  - g. Any exceptions that fall within future regulatory exceptions.

**D. Access/Review of PHI by Patients**

1. An individual has a right to access, inspect and obtain a copy of protected health information (PHI), excluding psychotherapy notes, from the individual's designated record set (DRS), as provided for by law and outlined in the WVUPC Notice of Privacy Practices.

2. Patients wishing to inspect their records will be requested to schedule an appointment to review or view their PHI in a secure, private location. A signed authorization or other form approved by HIM must be on file documenting the request. HIM or clinical staff must verify the patient's identity by requesting a valid form of ID (driver's license or other form of photo identification)
3. Pursuant to West Virginia Code Section 16-29-1(a), for a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, his authorized agent or authorized representative upon request following termination of the treatment program.
4. Individuals who wish to request restriction of access to PHI must notify the HIM Department in writing (see related policy for further information). HIM will honor requests not to disclose PHI to an insurer relating to an encounter that is paid for out-of-pocket by the patient, and any other reasonable requests that do not prohibit treatment, payment or other healthcare operations.
5. The fee for patient access requests must be reasonable and cost-based. The fee shall be based upon HIM policy, consistent with State requirements and industry guidelines. The computed fee may include staff time spent creating and copying files (including but not limited to compiling, extracting, scanning, encrypting, burning to media and distributing media), and the cost of supplies, including but not limited to media, postage and courier fees.

**F. Waiver for the Protection of WVUPC and Physician**

When a patient has instituted legal action against WVU Hospitals and/or WVUPC, a waiver of the confidential status of the medical record is implied. WVU Hospitals and the physician may, therefore, use the medical record in its or his own defense without authorization of the patient as provided for in federal and/or state law.

**G. Photographs and Recordings**

1. A patient's right to privacy and confidentiality includes his or her right not to be photographed, videotaped, audio-recorded or otherwise recorded without his or her knowledge and consent. Prior written authorization must be obtained from the patient to be photographed, recorded and/or viewed on closed circuit television within any WVUPC facility. Such authorization shall become part of the patient's permanent medical record.

2. The patient's provider or designee is responsible for obtaining the patient's authorization and for explaining the purpose or use of the photographs, tape recordings, audiovisual recordings or similar recordings.
3. In cases of suspected child or elder abuse, photographs may be taken of the individual believed to be abused, if the provider has a valid medical reason for believing the individual has been abused and for purposes of documenting the injuries in the patient's medical record, and as part of the provider's abuse report.
4. Photographs cannot be released to outside parties unless the request is by court order, is by a valid and enforceable subpoena, or unless the patient consents in writing.
5. Photographs must be taken on approved equipment only and may not be taken utilizing personally owned devices such as a smartphone.

**H. Mandatory Disclosures**

Certain reporting is required by law. For more information on various types of mandatory reporting, refer to WVUPC HIPAA policies regarding disclosures as required by law, disclosures about victims of abuse, neglect or domestic violence, and disclosures for judicial/administrative and law enforcement purposes.

**I. Governmental Agencies, e.g., Occupational Safety and Health Administration (OSHA)**

1. A properly identified agent will be given verification/identification of a patient and related services provided at WVUPC facilities. Valid documentation from an Agency Handbook that verifies a right to know must be presented for information pertaining to:
  - a. military and veteran activities
  - b. national security and intelligence activities
  - c. protective services for the President, and
  - d. medical suitability for governmental duty/benefits.

HIM will consult with the Privacy Officer and/or general counsel as needed to validate access authority in such cases.

**K. Health Oversight Activities**

1. PHI may, pursuant to HIPAA, be disclosed to health oversight agencies for oversight activities authorized by law including:
  - a. civil, administrative or criminal investigations
  - b. audits
  - c. inspections
  - d. licensure reviews, or
  - e. disciplinary actions

HIM will consult with the Privacy Officer and/or general counsel as needed to validate access authority in such cases.

**REFERENCES:**

HIPAA Privacy Regulations, 65 Fed. Reg. 82650-82662 (12/28/00) and 67 Fed. Reg. 53219-53226  
45 CFR 164.502 - Uses and Disclosures of protected health information: general rules  
45 CFR 45 C.F.R. 164.508  
45 CFR 164.510 - Uses and Disclosures requiring an opportunity for the individual to agree or to object  
45 CFR 164.510(a) - Uses and Disclosures for Facility Directories  
45 CFR 164.512 - Uses and Disclosures for which consent, and authorization, or opportunity to agree or object is not required.  
45 CFR 164.512(b) - Uses and Disclosures for Public Health Activities  
45 CFR 164.512(i) - Uses and Disclosures for Research Purposes  
45 CFR 164.512(f) - Disclosures for Law Enforcement Purposes  
45 CFR 164.512(j) - Uses and Disclosures to avert a serious threat to health or safety  
45 CFR 164.522 - Rights to request privacy protection for protected health information  
45 CFR 164.522(b)(1) - Confidential Communications Requirement  
45 CFR 164.524(a) - Access to Protected Health Information  
HITECH, Section 13405(d) - No Payment for PHI  
WV Code 27-3-1 Protection of Behavioral Health Information  
WV Code 16-3C-3 HIV-Related Testing