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.

WVUPC is a participating covered entity in an Organized Healthcare Arrangement (OHCA) allowing for the sharing and use of PHI as necessary for treatment, payment and healthcare operations (TPO) within and between the covered entities who are part of the OHCA.

Questions regarding this policy should be directed to the WVUPC Privacy Officer (304-347-1354).

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 or its contractual designee in order to make decisions about individuals.

Medical records are to be maintained for at least the minimum period required by applicable state law. Billing records shall be maintained for not fewer than seven years. (Refer to Health Information Management (HIM) and Administrative policies regarding the composition and requirements for the Designated Record Set.)

**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 with health plans, consultation with other providers, and referral to other providers related to care of the patient.

**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 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.

**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 PHI for its own treatment, payment and healthcare operations purposes.

2. WVUPC may disclose PHI to another covered entity for the treatment, payment, and health care operations of the other covered entity within the following limitations:
   a. Each entity has or had a relationship with the individual who is the subject of the information;
   b. The PHI exchanged pertains to that relationship;
   c. The purpose is for operations that include: quality assessment and improvement activities; population-based activities relating to improving health or reducing health care costs; case management and care coordination; certification; conducting training programs; accreditation; certification; licensing or credentialing activities; health care fraud and abuse detection or compliance.

3. WVUPC may disclose PHI upon the Authorization from the patient, (i.e., the patient may give WVUPC written authorization to use medical information or to disclose it to anyone for any purpose). 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 the medical information for any reason except those outlined in relevant state/federal law and as summarized 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. 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. 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.

   Personnel at WVUPC will use professional judgment and their experience with common practice to allow a person to pick up filled prescriptions, medical supplies or
other similar forms of medical information.

5. **Disaster Relief**: WVUPC may use or disclose a patient’s medical information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts.

6. **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 disclose medical information to a business associate to assist in these activities.

7. **Business Associate**: WVUPC may disclose a patient’s medical information to a company or individual performing functions or activities to or on behalf of one or more of the Affiliated Entities who may have access to or be given a patient’s health information in order to provide the contracted services.

8. **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 information using any WVUPC or WVU Hospital systems other than MyWVUchart, including Merlin Hyperspace.

   Every employee is encouraged to sign up for MyChart at 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. Access to any other person’s PHI, e.g., friend, relative, spouse, child, without the use of MyWVUChart is strictly prohibited. There are strict auditing processes utilized to ensure that all PHI is protected and released accordingly.

   Employees can also request **proxy access** to a family member’s record by obtaining consent through the Health Information Management Department.

3. **Minors**: For children under the age of 12, a **parent must sign** a Consent for Proxy in person at Health Information Management.

   For minors between the ages of 12 -18, the **minor must sign** a Consent for Proxy in person at Health Information Management for a parent or legal guardian. A parent or
legal guardian can also provide a notarized signature from the minor or a legal ID card with the minor's signature for comparison without the minor present.

4. **Adults (i.e. spouse, parents, friends)** must sign a Consent for Proxy in person at Health Information Management. Adults (i.e. spouse, parents, friends) can also provide a notarized signature or a legal ID card with the signature for comparison without them being present.

5. Any other requests for access to protected health information (PHI) should be directed to Health Information Management.

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. **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 outlined in the Notice of Privacy Practices.
2. The patient will be requested to schedule an appointment to review or view their PHI in a secure, private location. A signed authorization must be on file documenting the request. The staff member assisting the patient must verify the patient’s identity by requesting a valid form of ID (driver’s license, student card, etc.)

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 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 Health Information Management (HIM) department in writing. HIM will honor reasonable requests that do not prohibit treatment, payment, or other healthcare operations.

F. Waiver for the Protection of WVUPC and Physician

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

G. Photographs and Recordings

1. A patient's right to privacy and confidentiality includes his or her right not to be photographed, videotaped, audiorecorded or otherwise recorded without his or her knowledge and consent. Prior authorization must be obtained from the patient to be photographed, recorded and/or viewed on closed circuit television within any WVUPC facility. The authorization becomes 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. All photographs shall be securely stored in the provider’s office until a subpoena is presented for disclosure.

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 policies regarding Law Enforcement and Health Authority Cases, Warrants, Subpoenas, and Requests for Patient Information by Law Enforcement, and Uses and Disclosures of Protected Information for Specialized Government Functions.

I. Special Cases

In rare and special cases where danger to persons, the patient or others is imminent and can no longer be handled in the context of treatment, WVUPC’s obligation to society may require its healthcare providers to break confidentiality, but only to the minimum extent necessary to protect life or property. In such cases, the patient should be informed of the decision; however, his or her permission is not necessary.

The attending physician must make the determination to take this action, and it should be noted in the medical record. An approved staff member will transmit the necessary information to the proper law enforcement agencies.

J. 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

K. Health Oversight Activities

1. PHI may 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

REFERENCES:

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