

1. Uses and Disclosures of Protected Health Information	
PURPOSE	This policy explains the process for using or disclosing Protected Health Information (PHI).
POLICY	<p>1.1 Polk County will recognize that PHI cannot be used or disclosed except as described in Polk County's policies and procedures. §164.502</p> <p>1.2. Polk County will recognize that uses and disclosures can be made to carryout treatment, payment, or health care operations (TPO). §164.506</p> <p>1.3. Polk County will recognize that certain uses and disclosures may require patient authorization. §164.508</p> <p>1.4. Polk County will recognize that certain uses and disclosures may require an opportunity for the patient to agree or to object. §164.510</p> <p>1.5. Polk County will recognize that certain uses and disclosures do not require patient authorization, or an opportunity for the patient to agree or to object. §164.512 §164.514(f) and (g)</p>

PROCEDURES

In every instance of use or disclosure of Protected Health Information (PHI), you must make judgments about the identity, role, authority and needs of the PHI user/recipient. Based upon these judgments, you must then define the type and amount of PHI the user/recipient will be able to have. In almost every instance, this means providing only the minimum PHI that is necessary for the user/recipient to perform their role with "limited data sets" and/or to "de-identified" data. And you must determine if patient approval is required before use and disclosure.

For the typical activities of Polk County such as Treatment, Payment and Operations

(TPO), judgments can be made up-front rather than on a case-by-case basis. These judgments will enable you to put in place standard practices, assurances and agreements that will allow a variety of Polk County workforce members to perform these tasks without having to seek guidance in every instance. But for use or disclosure circumstances that are not typical (generally not related to TPO), judgments must be made about almost every request. Therefore, the Privacy Officer should be involved in all atypical uses and disclosures.

The Privacy Officer must appropriately record all unusual disclosures (not a part of TPO and are not disclosures to the patient). Documentation must include all of the following:

- Person or organization requesting the information;
- Purpose of the request for PHI;
- Date of request;
- Description of the PHI disclosed;
- Date of disclosure.

These procedures provide more information on what restrictions that are required regarding use and disclosure. Any time a disclosure is made, you must follow the verification requirements in Policy 5.0, Verification Requirements for use and disclosure of PHI.

Disclosure Related to Treatment, Payment and Operations

Use Among, and Disclosure to Workforce members

§164.514(d)(2)

The Privacy Officer must categorize Polk County managers, workforce members, contractors, consultants and Business Associates (workers) by the Protected Health Information (PHI) they need to do their jobs. For instructions and more detailed information, see the policies and procedures on administrative actions and minimum necessary standards.

Disclosing to Patients

§164.524

In most cases, Polk County will accommodate a patient's right to see or copy his or her information. However, there are circumstances where providing some or all of the information is not appropriate, particularly when the patient's representative is making the request. See the Patient's Right to Health Care Information section of these Policies and Procedures about how to handle a patient's request for PHI.

Disclosing to Family Members or Friends Involved in Care §164.510(b)

Discussing PHI with the Patient's Family or Friend

Polk County may disclose PHI to a person (a family member, other relative, a close personal friend, or any other person identified by the patient) involved with a patient's care and/or payment for care. The PHI disclosure must be relevant to this person's involvement in the patient's care and consistent with the wishes of the patient. (See below about the presence and ability of the patient).

Finding and Notifying Family Members

You may use or disclose PHI necessary to identify and locate a family member or personal representative of the patient, and notify them of the location, general condition or death of the patient. Such disclosures must be consistent with the wishes of the patient (see below about the presence and ability of the patient).

When the Patient is Present and Able

You can discuss a patient's PHI with, and in front of a family member or friend if it is reasonable to assume that the patient will not object. So use your professional judgment to determine if the patient will have no objections to sharing the PHI with another person. However, if you have any doubts, and the patient is present and able to make decisions regarding his or her care, ask the patient for permission before discussing the PHI with or in front of another person, or give the patient an opportunity to prevent you from doing so.

When the Patient is Not Present or Able

If the patient is not present, or is incapacitated or cannot respond because of an emergency situation, disclose the PHI to another person (like a family member, close friend, representative) only when you believe, in your professional judgment that such a disclosure is in the best interest of the patient. Before choosing the family member or friend with whom to discuss the PHI, consider if the patient has made any previous request for restrictions on sharing his or her PHI, such as a requirement for confidential communications. (See the section in these Policies and Procedures on Patient's Right to Request Privacy Protection.) Also, consider potential harm that may result from the disclosure (if, for example, you suspect that the person you are speaking with is abusing the patient). The person to whom

you disclose PHI should also be someone you would reasonably expect to be involved with the patient's health care. These judgments also apply when allowing someone other than the patient to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.

Disclosing Through a Facility Directory

§164.510(a)

Form: Notice of Directory Listing

The only information that may be included in the Polk County directory of patients is the patient's name, location within the facility, general condition, and religious affiliation. Only members of the clergy and Polk County workforce members should be allowed to see the information in the directory; however, directory information about a particular patient can be shared with visitors who ask for that patient by name. Polk County must allow the patient an opportunity to agree or object to listing his or her information in the directory.

When a new patient arrives at the facility, or before compiling the Polk County directory, provide patients a copy of the *Notice of Directory Listing*. The form tells the patients which information about them will appear in the directory and gives them a chance to express their wishes about it. Have the patients fill out the form, or fill it out for them (if they are unable to write but can express their wishes) and place it in their files. Polk County must maintain the directory in accordance with each patient's wishes even if a patient's condition changes to render him unable to agree or object to his listing in the directory.

If patients are initially unable to agree or object because of incapacity or emergency treatment situations, Polk County can include their information in the directory unless there is reason to believe that doing so is not in their best interests. However, at the first opportunity when the patients are able, have them fill out the form.

Disclosure to Other Providers

§164.502(b)(1) and (2)(i), §164.506(c)(2-5), §164.514(d)(iii)(B)

Form: Provider Request for PHI

If a request from another provider is not routine (for example, from a provider that Polk County does not regularly work with), or if you have any concern about the legitimacy of the request, use the Provider Request for PHI form, involve the Privacy Officer, and follow the procedures below. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that.

When another health care provider requests a patient's PHI, ask the provider to state the reason for seeking the information.

For Treatment

If another provider is seeking PHI in order to treat a patient, you can provide any of the PHI without the patient's authorization except for psychotherapy notes (share psychotherapy notes only with patient authorization). This means you do not have to apply the minimum standard when providing PHI to another health care provider for treatment purposes.

For Payment, Operations, Fraud and Abuse Detection, and Compliance

If other providers seek PHI for reasons related to payment, operations, fraud and abuse detection, or compliance issues, ask them to confirm that they have or had a relationship with the patient. If they cannot confirm this, do not provide them any PHI. Also ask them to confirm that they are classified as a "covered entity" under HIPAA. This simply means that they are required to comply with HIPAA just like Polk County. If they are not a covered entity, you will have to decide what PHI you will provide using the minimum necessary standard (see that section in these Policies and Procedures). If they are a "covered entity" ask them to describe the minimum necessary information needed to achieve their purposes. Because they are a "covered entity," you can rely upon their judgment about this, if it appears reasonable. You do not have to get a patient's authorization or consent, but are not prohibited from doing so.

For Marketing and Fundraising

If another health care provider seeks patient PHI for marketing or fundraising purposes, get authorization from the patient(s) before disclosing the PHI.

Disclosure to Affiliates

164.504(d)

Polk County can disclose PHI to another "covered entity" (organization that must comply with HIPAA like Polk County) for the treatment, payment and operations as if Polk County and this affiliate were one entity if they:

- C Are under the common ownership or control; and
- C Combine functions; and
- C Both implement safeguards to ensure HIPAA rules as they apply to the

functions they perform; and

C Document this arrangement

Disclosure to Other Members of Organized Health Care Arrangements (OHCA)
§164.506(c)(5)

If Polk County is a member of an OHCA, it can disclose PHI to other members for any health care operations activities of the OHCA.

Business Associate Use and Disclosure
§164.502(e) and §164.504(e)(1)

Polk County Business Associates (see glossary) can create, use and accept PHI from Polk County without patient authorization or agreement, as long as the associate uses proper safeguards (just like the ones implemented by Polk County). To assure that Business Associates will implement such safeguards, Polk County must enter into agreements with the Business Associates which commit them to do so. See the section in these Policies and Procedures on Business Associates.

Polk County is not required to have such agreements with health care provider associates when disclosing information to them about patients they are treating.

Disclosure to Payers
§164.506(b)(3)

[Form: Payer Request for PHI](#)

When making disclosures of PHI to an entity that is paying for treatment given by Polk County, provide the minimum necessary PHI for the entity to make payment.

If a payer demands more information than you believe is necessary, or if the request is in some way non-routine (for example, when the payer is unknown or the payment has already been made), do the following: involve the Privacy Officer, have the payer fill out the *Payer Request for PHI* form, and follow the procedures above. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that.

For payers seeking PHI for reasons related to operations, fraud and abuse detection, or compliance issues, ask them to confirm that they have or had a relationship with the patient. If they cannot confirm this, do not provide any PHI. Also ask them to confirm that they are classified as a “covered entity” under HIPAA. This simply means that they are required to comply with HIPAA just like Polk County. If they are not a covered entity, you will have to decide what PHI to provide

using the minimum necessary standard (see that section in these Policies and Procedures). If they are a “covered entity,” ask them to describe the minimum necessary information they need to achieve their purposes. When they are a “covered entity,” you can rely upon the payers’ judgment about this, if it appears reasonable. You do not have to get a patient’s authorization or consent, but are not prohibited from doing so.

For Marketing and Fundraising

If the payer is seeking patient PHI for marketing or fundraising purposes, get authorization from the patient(s) before disclosing the PHI.

Workers Compensation
§164.512(l)

Worker’s Compensation is a specified exclusion from HIPAA. However, for disclosure for Workers’ Compensation purposes, provide only the PHI 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. You need not consider fault when making such disclosures nor get the patient’s authorization or agreement to do so. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that.

The following chart demonstrates the manner in which health information may be classified as protected and how it may be shared by employees who manage both Worker’s Compensation (non-protected) and the Employee Benefit Plan (protected).

Worker’s Compensation	Employee Benefit Plan
Not PHI	PHI
May share information o o o o o	May not share information » » » » »

Public Health

Public Health Authority
§164.512(b)(1)(i)

Under HIPAA, Polk County can, and may be required to by other laws, report PHI (such as vital records like births or deaths), to assist public health authorities in preventing or controlling disease, injury or disability. The Privacy Officer should

preside over such disclosures, and file all associated documentation. The disclosed information should relate to activities such as public health surveillance, investigations and/or interventions. It should be given only to public health authorities authorized by law to collect this information, and to foreign governments when Polk County is directed to do so by such an authorized U.S. public health authority. Polk County is not required to get authorization or agreement from patients when making such disclosures, but should disclose the minimum necessary PHI for this purpose.

Research

§164.512(i)

Form: Research Request for PHI

When research requests are made for Polk County PHI, have the requestor fill out the Research Request for PHI and get the relevant documentation. Also make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that.

You may disclose PHI for research purposes, regardless of the funding source, if certain conditions exist or the researcher has met the proper criteria.

Alteration or Waiver of Authorization

If the researcher claims to have obtained an alteration or waiver, make sure that he or she provides documentation of the alteration/waiver with the request. That documentation must include the following:

- C Identification of the Institutional Review Board (IRB) or a privacy board, and specification of the date of the action. If a privacy board is reviewing the documentation, the board must be comprised of members with various backgrounds and professional competency, have at least one member who is not affiliated with Polk County, and have no board members with a conflict of interest. Review of research must occur at a meeting where the majority is present, including the member who has no affiliation. The majority present must agree. An expedited method can be used if it does not pose more than a minimal risk to the patients who's PHI will be used in the research.
- C A statement that the IRB or privacy board has determined that the use of PHI will result in minimal risk to the privacy of the individuals based on an adequate plan of protection, a plan to destroy identifiers as soon as possible, and written assurances of protection.

- C A description of the PHI requested.
- C Statement that research could not be conducted without the waiver or alteration.
- C Statement that research could not be conducted without access to the PHI.
- C Review and Approval Procedures.
- C Required Signature.

Reviews Preparatory To Research

Polk County can disclose PHI to research organizations in preparation for conducting research if it first obtains from the researcher the following written assurances:

- C The use or disclosure is to review PHI in order to prepare a research protocol or make other preparations for research.
- C No PHI will be removed from Polk County.
- C The PHI being viewed is necessary for research purposes..

Research on Decedent's Information

Polk County can disclose PHI on decedents to research organizations for research purposes if it first obtains from the researcher the following:

- C Assurance that the use or disclosure being sought is solely for research on the PHI of decedents.
- C Documentation of the death of such individuals.
- C Documentation that the PHI being sought is necessary for the research purposes.

Research with Authorization

If the researcher will be providing the authorizations, make sure that the authorizations conform to the Polk County requirements. Only provide PHI for each patient who has signed such an authorization.

If the researcher asks Polk County to obtain the patient authorizations, have the researcher provide a list(s) specifying the patients for which he needs the

PHI or provide a written description of the type of patient PHI he is seeking. Polk County workforce members, who have access to the relevant PHI as a regular part of their job duties, will then ask patients to sign the authorizations.

Research with a Limited Data Set

If the researcher needs only limited data, establish a Data Use Agreement with the researcher. See the section in these Policies and Procedures on Limited Data Set and the requirements of a Data User Agreement.

People Who Might Have Been Exposed to Communicable Diseases

§164.512(b)(1)(iv)

Polk County can, and may be required or allowed to by laws other than HIPAA, disclose relevant information to someone who might have been exposed to a communicable disease, or is at risk of contracting or spreading a disease or condition. The Privacy Officer should preside over such disclosures, and file all associated documentation. If there is any question about Polk County's authority to communicate with the individual, ask the relevant public health authority (as described above) for permission regarding authority and contact with the individual. In either case, the information you provide should be relevant only to a health intervention or investigation. Furthermore, Polk County is not required to get authorization or agreement from patients when making such disclosures.

People Responsible for Products Regulated by the FDA

§164.512(b)(1)(iii)

For products regulated by the Food and Drug Administration, Polk County can report information to the persons (businesses) responsible for those products about the quality, safety and effectiveness of the products. The Privacy Officer should preside over such disclosures, and file all associated documentation. The disclosures can include information about harm caused by the product's misuse, defects, mislabeling and biological deviations. The purpose of these disclosures can include tracking/surveillance, enabling recalls, repairs, replacement or post-marketing surveillance. Polk County is not required to get authorization or agreement from patients when making such disclosures, but should disclose the minimum necessary PHI for this purpose.

Employers

§164.512(b)(1)(v)

Note: This section is applicable only if the County pays benefits to a non-employee as if they were an employee, such as a temporary or contract person.

If reporting PHI to an employer is not a part of the routine at Polk County, the

Privacy Officer should preside over such disclosures, and file all associated documentation. Polk County may provide PHI to an employer about an employee who is a patient of Polk County if:

Polk County is providing health care to the employee at the request of the employer or Polk County is a part of the employer's workforce; and

Such a request is for the purpose of evaluation relating to a medical surveillance of the workplace or to determine if the employee has a work-related illness or injury; and

The PHI is necessary to the employer to carry out its responsibilities under the law, and the PHI consists of findings regarding a work-related illness or injury, or a workplace-related medical surveillance; and

When the patient was treated, Polk County informed the patient that PHI can be disclosed to the employer. This can be done either by providing a written notice, or, if treatment is provided on the employer work site, by posting the notice in a prominent place where the treatment is provided.

Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

For Disaster Relief

§164.510(b)(4)

You may disclose PHI necessary to a disaster relief agency to identify and locate a family member or personal representative of the patient, and to provide notification of the location, general condition or death of the patient. Such disclosures must be consistent with the wishes of the patient (see below about the presence and ability of the patient) and the need to respond to emergencies, but include the minimum necessary PHI. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

When the Patient is Present and Able

You can discuss a patient's PHI with, and in front of a disaster relief worker if it is reasonable to assume that the patient will not object. So use your professional judgment to determine if the patient will have no objections to sharing the PHI with another person. However, if you have any doubts, and the patient is present and able to make decisions regarding his or her care, ask the patient for permission before discussing the PHI with or in front of another person, or give the patient an opportunity to prevent you from doing so. You can discuss the PHI with disaster relief workers if it is reasonable to assume

that the patient will not object, or if failing to do so will interfere with the disaster relief agency's or Polk County's ability to respond to an emergency.

When the Patient is Not Present or Able

If the patient is not present, or is incapacitated or in an emergency situation and cannot respond, disclose his PHI to a disaster relief agency only when you believe that such a disclosure is in the best interest of the patient. Before making the disclosure, consider whether the patient has made any previous requests for restrictions on sharing his PHI. Also consider whether potential harm may result from the disclosure. You may make the disclosure only if you reasonably expect that the relief agency personnel will use the information to contact someone who should be involved with the patient's health care, or if failing to disclose will interfere with the agency's or Polk County's ability to respond to an emergency.

Reporting on Crimes, Criminals, Victims and Inmates

Child Abuse

§164.512(b)(ii)

Forms: [Disclosure of PHI for Abuse, Neglect and Domestic Violence](#)

Notice of Disclosure of PHI (not required)

Under HIPAA, Polk County can, any may be required to by other laws, report suspicions of child abuse. It can also provide PHI to public health authorities authorized by law to receive reports of child abuse or neglect. Use the form for *Disclosure of PHI for Abuse, Neglect and Domestic Violence and file all records*. The Privacy Officer should preside over such disclosures, and file all associated documentation. Polk County is not required to get authorization or agreement from the patient or their representative when making such disclosures. A notification to the patient/representative is included with the form, but it is not required. In fact, it should rarely be used in the case of child abuse. (It is designed primarily for such reports about abuse of adults.) Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Abuse, Neglect and Domestic Violence Against an Adult

§164.512(c)

Form: [Disclosure of PHI for Abuse, Neglect and Domestic Violence](#)

You can disclose the minimum necessary PHI of adults who are victims of abuse, neglect, or domestic violence, to a social service agency or law enforcement agency

authorized to receive such information, under the following circumstances:

- C A disclosure is required by law; or
- C The individual agrees to the disclosure; or
- C The disclosure is allowed by statute or regulation and, in your professional judgment, you believe a disclosure is necessary to prevent serious harm to the patient or other potential victims; or
- C The disclosure is allowed by statute or regulation and, if the patient is unable to agree because of incapacity, a public official (including law enforcement) agrees that PHI will not be used against the patient, and also claims that waiting for patient's consent would adversely affect related enforcement activities.

Use the form for *Disclosure of PHI for Abuse, Neglect and Domestic Violence*. The Privacy Officer should preside over such disclosures, and file all associated documentation. Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Polk County is not required to get authorization or agreement from the patient or their representative when making such disclosures. However, when a disclosure is made under these circumstances, inform the patient as soon as possible that the disclosure has been made, unless you believe that informing the patient or representative could cause risk or serious harm. A conditional notice to the patient/representative for this purpose is included with the form for *Disclosure of PHI For Abuse, Neglect and Domestic Violence*. If you decide to use the notice, give a copy of it to the patient/representative, along with a copy of the form and any supporting documentation.

Averting Threats

§164.512(j)(1)(i)

Form: [Disclosure of PHI for Law Enforcement](#)

HIPAA allows, and other laws may require, Polk County to disclose PHI necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Such disclosures should be made to person(s) who are reasonably able to prevent or lessen the threat, which can include the person who is the target of the threat. Polk County will have acted in good faith if the disclosure is based upon Polk County's direct knowledge or Polk County's reliance on a credible account by a person with apparent knowledge or authority. Authorization or the

opportunity for the patient to agree or deny is not required. Disclose the minimum PHI necessary for this purpose. Furthermore, make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Escaped Inmates

§164.512(j)(ii)(B)

Form: [Disclosure of PHI for Law Enforcement](#)

HIPAA allows, and other laws may require, Polk County to disclose PHI about a person who appears to be an escapee from a correctional institution or from lawful custody. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Polk County will be presumed to have acted in good faith if the disclosure is based upon Polk County's direct knowledge or Polk County's reliance on a credible account by a person with apparent knowledge or authority. Authorization or the opportunity for the patient to agree or deny is not required. Disclose the minimum PHI necessary for this purpose. Furthermore, make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Reporting Violent Criminals

§164.512(j)(ii)(A)

Form: [Disclosure of PHI for Law Enforcement](#)

Polk County can disclose PHI to law enforcement authorities to help them identify or apprehend an individual who admitted to participating in a violent crime in which someone was seriously hurt. However, do not make such a disclosure if the statement occurred during treatment, counseling, or therapy (or request for such services) for the type of behavior that led to such a crime. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Polk County can disclose only the following information concerning patients who make statements about participating in violent crimes:

- C The statement (admitting participation in a violent crime);
- C Name and address;
- C Date and place of birth;
- C Social Security number;
- C ABO blood type and Rh factor;
- C Type of injury;
- C Date and time of treatment;
- C Date and time of death (if applicable);

- C Description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that. Polk County will be presumed to have acted in good faith if the disclosure is based upon Polk County's direct knowledge or Polk County reliance on a credible account by a person with apparent knowledge or authority. Authorization or the opportunity for the patient to agree or deny is not required.

Law Enforcement Disclosures

§164.512(f)(1)(i)

Form: [Disclosure of PHI for Law Enforcement](#)

PHI may be disclosed to law enforcement officers as required by law. For example, some laws require that you report wounds or other physical injuries to local law enforcement. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the *Disclosure of PHI for Law Enforcement* form. If the disclosure results from a request, rather than Polk County volunteering the information, ask whomever is requesting the information to cite the law. If you are unfamiliar with the stated law, check to make sure it indeed requires disclosure by Polk County. You are not required to obtain patient authorization or to provide the patient with an opportunity to agree or object. Disclose the minimum necessary PHI for this purpose. Furthermore, make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Legal Orders

§164.512(f)(1)(ii)

Form: [Disclosure of PHI for Law Enforcement](#)

PHI may be disclosed in compliance with, and as limited by a court order, a court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; an administrative request, including an administrative subpoena or summons; a civil or an authorized investigative demand; or similar process authorized under law. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Before making a disclosure, obtain a copy of whichever above-mentioned document applies. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about

how to do that.

If the request for PHI is based upon an administrative request such as an administrative subpoena or summons, or a civil or investigative demand, the information sought must be:

- C Relevant and material to a legitimate law enforcement inquiry; and
- C Specific and limited to what is reasonably needed for the purpose for which the information is sought; and
- C De-identified information could not reasonably be used.

You are not required to obtain patient authorization or to provide the patient with an opportunity to agree or object. Disclose the minimum necessary PHI for this purpose using the legal order as a guide. If the requestor seeks information that is inconsistent with what is listed in the order, or appears inconsistent with a reasonable interpretation of what the order calls for (when the information is not listed), get legal assistance to determine the minimum necessary required by the order.

Identifying or Locating a Person

§164.512(f)(2)

Form: Disclosure of PHI for Law Enforcement

PHI may be disclosed to a law enforcement official when he or she makes a request to help identify or locate a suspect, fugitive, material witness, or missing person. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Under the circumstances mentioned above, only the following PHI may be disclosed:

- C Name and address;
- C Date and place of birth;
- C Social Security number;
- C ABO blood type and Rh factor;
- C Type of injury;
- C Date and time of treatment;
- C Date and time of death, if applicable;
- C A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

Unless required by law, you may not disclose any PHI related to the individual's DNA or DNA analysis, dental records, typing samples, or analysis of body fluids or tissue.

You are not required to obtain patient authorization or to provide the patient with

an opportunity to agree or object. Make sure that the people receiving the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Victims of Crime

§164.512(f)(3)

Form: [Disclosure of PHI for Law Enforcement](#)

PHI may be disclosed to a law enforcement official making a request for information about a patient who is, or is thought to be, a victim of a crime. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. The patient must either provide consent, or be unable to provide consent because of incapacity or other emergency circumstances. For a patient who is able, use the *Disclosure of PHI for Law Enforcement* form even if he or she denies consent. If the patient is unable to provide or deny consent, you can disclose the PHI if:

PHI is needed to determine whether a violation of law has occurred, and such information is not meant to be used against the patient; and

- C The law enforcement activity that depends on the PHI would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and
- C In your professional judgment, you believe a disclosure is in the best interest of the patient.

Disclose the minimum necessary for this purpose. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Death due to Criminal Conduct

§164.512(f)(4)

Form: [Disclosure of PHI for Law Enforcement](#)

If there is a reasonable suspicion that a patient died from criminal activity, you may alert law enforcement officials without obtaining the written authorization of the patient's representative, and without giving the patient/representative an opportunity to agree or object to the disclosure. Use the form for *Disclosure of PHI for Law Enforcement*. The Privacy Officer should preside over such disclosures, and file all associated documentation. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Crime on Polk County Premises

§164.512(f)(5)

Form: [Disclosure of PHI for Law Enforcement](#)

If a crime occurs on Polk County premises the Privacy Officer should be involved in reporting the crime. It is recommended that the form for *Disclosure of PHI for Law Enforcement* be used if PHI is a part of what is reported. In the report to law enforcement officials, you can include PHI that is evidence of the crime without obtaining the written authorization of the patient or the patient's representative, and without providing the patient/representative an opportunity to agree or object to the disclosure. Include only the minimum necessary PHI that will provide evidence of the crime or help in catching the perpetrator.

Reporting a Crime in Emergencies

§164.512(f)(6)

Form: [Disclosure of PHI for Law Enforcement](#)

Polk County can, and may be required to by law (other than HIPAA), disclose to a law enforcement officials evidence of a crime discovered while providing emergency health care. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Furthermore, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that. It is not necessary to obtain written authorization or agreement from the patient or the patient's representative. However, make sure that any PHI included relates to the commission and nature of the crime; the location of the crime; the victims; or the identity, description and location of the perpetrator of the crime. If the crime is abuse, neglect, or domestic violence, see the section in these Policies and Procedures on *Abuse, Neglect, or Domestic Violence*.

Related to Inmates

§164.512(k)(5)

Form: [Disclosure of PHI for Law Enforcement](#)

Although HIPAA privacy laws cover everyone receiving health care services from covered entities, there are certain requirements that do not apply when a person is incarcerated. These exemptions to specific requirements have been noted in these policies and procedures.

Polk County may disclose PHI to a correctional institution or other law enforcement official who has lawful custody of an inmate or other individual, if the PHI is necessary for:

- C Provision of health care to that person;
- C Health and safety of that person or other inmates;
- C Health and safety of the officers, employees, or others at the correctional institution, the persons responsible for transporting inmates, or other law enforcement officials;
- C Administration and maintenance of the safety, security, and good order of the correctional institution.

This does not apply to persons who have been released on parole, probation, supervised release, or otherwise are no longer in lawful custody. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Disclosure of PHI for Law Enforcement*. Patient authorization or opportunity for the patient to agree or object is not required. Disclose the minimum necessary PHI for this purpose. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Oversight of Polk County, the Health Care System and Government Programs

Requests from the Secretary of the Department of Health and Human Services §160.3 and §164.502(a)(2)(ii)

Disclosures to the Department of Health and Human Services are required for Polk County; however, such disclosures do not require written authorization or agreement from the patient or the patient's representative. The Privacy Officer should preside over such disclosures, and file all associated documentation. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the *Verification Requirements* section of these Policies and Procedures about how to do that.

Other Requests for Use or Disclosure for Oversight Activities §164.512(a) and §164.512(d)

Forms: [*Disclosure of PHI for Law Enforcement*](#)

Oversight and Regulatory Request for PHI

Polk County may disclose PHI to a health oversight agency for activities authorized by law and necessary for oversight of:

- C The health care system; and
- C A government benefit program for which health information is relevant to beneficiary eligibility. This includes non-health benefits programs if oversight of such a program requires health information; and

- C Entities subject to government regulatory programs for which health information is necessary for determining compliance; and
- C Entities subject to civil rights laws for which health information is necessary for determining compliance.

Some examples of oversight activities include:

- C Audits
- C Inspections
- C Licensure or disciplinary actions
- C Civil investigations, proceedings or actions
- C Administrative investigations, proceedings or actions
- C Criminal investigations, proceedings or actions

Because their focus is oversight, these rules are not designed to permit other kinds of law enforcement investigations of an individual. Therefore, see the section Reporting on Crimes, Criminals, Victims and Inmates and form for *Disclosure of PHI for Law Enforcement* if the request is about an individual patient and the request it is not directly related to:

- C The receipt of health care; or
- C Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services; or
- C A claim for public benefits if PHI is necessary to the investigation, which can include a benefits program that is not health-related.

The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Oversight and Regulatory Request for PHI*. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that. It is not necessary to obtain written authorization or agreement from the patient or the patient's representative for this type of disclosure.

Judicial or Legal Requests

Court Order or Administrative Tribunal Order

§164.512(e)(1)(i)

Form: [Judicial or Legal Requests for PHI](#)

For an order from a court or administrative tribunal, you may disclose PHI only as it is expressly authorized in the order. Patient authorization or opportunity for the patient to agree or object is not required. The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Judicial or Legal Requests* for PHI.

Subpoena, Discovery Request, Other Lawful Process Without an Order

§164.512(e)(1)(ii)&(iii)

Form: [Judicial or Legal Requests for PHI](#)

There are three circumstances where Polk County can disclose PHI in response to a subpoena, discovery request, or other lawful process when the request is not accompanied by an order from a court or administrative tribunal.

First, you may disclose the requested PHI if you receive satisfactory assurance that the party seeking the PHI sincerely tried to provide a notice to the patient and the patient had an opportunity to object. This assurance should consist of documentation (such as the notice) and must include a signed statement from the requestor saying:

- C The requestor made a good faith effort to provide a notice to the patient (which could have included sending it to the last known address of the patient); and
- C The notice included enough information about the litigation or proceeding for the patient to object through the presiding court or tribunal. Even if a copy of the notice is provided in which the opportunity to object seems clear, the requestor must sign a statement saying that the patient had enough information to raise an objection; and
- C The timeline provided for raising objections has expired and either no objections were filed, or the objections have been resolved through the court or tribunal to allow the disclosure.

Second, you may disclose the requested PHI if you receive satisfactory assurance that the party seeking the information made a reasonable effort to secure a qualified protective order. This assurance can consist of documentation (such as the protective order) and must include a signed statement from the requestor saying

that:

- C The parties involved have agreed to a qualified protective order and have presented it to the court or administrative tribunal; or
- C The party seeking the PHI has requested a qualified protective order.

To be qualified, the order must be, or propose to be, an order of the court or tribunal, or a stipulation between the disputing parties. It must also prohibit the parties from using or disclosing PHI for any reason other than the litigation or proceedings for which the information was requested, and require that the PHI be returned or destroyed at the end of the litigation.

Third, Polk County can agree to provide the above-described notice to the patient or seek the above-described qualified protective order. Note that the timeline for allowing the patient to object applies if a notice is issued.

If the above documentation is not provided and, therefore, you refuse to disclose the PHI to the requestor, you may have to seek legal counsel.

The Privacy Officer should preside over such disclosures, and file all associated documentation. Use the form for *Judicial or Legal Requests for PHI*. Make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using the legal document (subpoena, summons, etc.) as a guide. If the requestor seeks information that is inconsistent with what is listed in the legal document, or appears inconsistent with a reasonable interpretation of what the legal document allows (when the information is not listed), get legal assistance to interpret the minimum necessary required by the document.

Military, National Security and Foreign Services

U. S. Military Personnel

§164.512(k)(1)(i)

Patient authorization or agreement is not required for disclosures of military personnel PHI if the appropriate military authority has published a proper notice in the Federal Register. To be proper, the notice must describe the appropriate military command authorities and describe the purpose for the use or disclosure of PHI.

The Privacy Officer should preside over such disclosures, and file all associated documentation. Ask the requestor to provide a copy of the notice. Also, make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these

Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using the notice as a guide.

Foreign Military Personnel

§164.512(k)(1)(iv)

Patient authorization or agreement is not required for disclosures of foreign military personnel PHI to the patient's military command, if the appropriate military authority has published a proper notice in the Federal Register. To be proper, the notice must describe the appropriate military command authorities and describe the purpose for the use or disclosure of PHI.

The Privacy Officer should preside over such disclosures, and file all associated documentation. Ask the requestor to provide a copy of the notice. And make sure that the people requesting the information are who they claim to be and have the authority to receive the PHI. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using the notice as a guide.

Veterans and Military Personnel Being Discharged

§164.512(k)(1)(ii) and (iii)

Note: Polk County Veteran's Services is an ad litem unit assisting veterans and their spouses to access benefits. Veteran's Services is not a component of the Department of Defense or Veterans' Affairs.

If Polk County is a component of the Departments of Defense, Transportation or Veterans' Affairs, you may use and disclose the PHI of veterans and others who are leaving the military to (appropriate components of) the Department of Veterans' Affairs for use in eligibility determination. Refer to the procedures established by the Department of Veteran's Affairs on the process and type of data required.

Intelligence/Counterintelligence

§164.512(k)(2)

Patient authorization or agreement is not required for disclosures of PHI for U.S. national security and intelligence activities. Polk County may disclose PHI 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 its implementing act (like Executive Order 12333).

The Privacy Officer should preside over such disclosures, and file all associated documentation. Ask the requestor to provide a copy of, or at least cite his authority, and provide documentation of their request. Furthermore, make sure that the people requesting the information are who they claim to be. See the Verification Requirements section of these Policies and Procedures about how to do that.

Disclose the minimum necessary PHI for this purpose using the request as a guide.

Threats to Public Figures

§164.512(k)(3)

Patient authorization or agreement is not required for disclosures of PHI to officials providing protective services to the U.S. President or similar public figures (as authorized under 18 U.S.C. 3056 and 22 U.S.C. 2709(a)(3)) or performing related investigations (authorized under 18 U.S.C. 871 and 879).

The Privacy Officer should preside over such disclosures, and file all associated documentation. Ask the requestor to provide a copy of, or at least cite his authority, and provide documentation of the request. Furthermore, make sure that the people requesting the information are who they claim to be. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using the request as a guide.

Department of State Suitability Determinations

§164.512(k)(4)

If Polk County is a component of the U. S. Department of State, patient authorization or agreement is not required for disclosures of PHI to officials making medical suitability determinations for the purpose of security clearances and availability to work abroad.

The Privacy Officer should preside over such disclosures, and file all associated documentation. Ask the requestor to provide a copy of, or at least cite his authority, and provide documentation of their request. Furthermore, make sure that the people requesting the information are who they claim to be. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using their request as a guide.

Financial Gain Other Than Billing for Services

Fundraising

§164.514(f)(1)

For the purpose of raising funds for its own benefit, Polk County may use or disclose to a Business Associate or to an institutionally related foundation, the following PHI without written patient authorization:

- C Demographic information relating to a patient.
- C Dates of health care provided to the patient.

Before Polk County can use PHI for fundraising purposes, it must include a

statement in the *Notice of Privacy Practices* (in accordance with §164.520(b)(ii)(A) and (b)(iii)(B)). The statement should say something like, “Polk County may contact you based upon your protected health care information...to raise funds for Polk County.”

Fundraising materials sent to patients must include a description of how they may opt out of receiving any further fundraising communications. If the patient takes this option, Polk County must ensure that no further communication will be sent to this patient.

Marketing

§164.508(a)(3)

Polk County must obtain written authorization for any use or disclosure of PHI for marketing with these exceptions:

- C A face-to-face communication made by Polk County to an individual.
- C A promotional gift of nominal value.

Otherwise, the patient or the patient’s representative must complete an *Authorization to Use or Disclose PHI* form. If the marketing involves remuneration to Polk County by a third party, Polk County must say so in the *Authorization to Use or Disclose PHI* form.

Exceptions to Disclosure Restrictions for Polk County Workforce members and Business Associates

Whistleblowers

§164.502(j)

Employees or Business Associates of Polk County may disclose PHI without written authorization and without a formal request to the Privacy Officer when they believe, in good faith, that Polk County:

- C Engages or has engaged in unlawful conduct; or
- C Violates professional or clinical standards; or
- C Potentially endangers patients, workers or the public.

These whistleblowers may disclose PHI that is substantive to their concern, to:

- C A relevant health oversight agency, public health authority or accreditation organization; and/or

- C An attorney retained by or on behalf of the whistleblower for the purpose of determining the whistleblower's legal options.

Workforce members Victims of Crime

§164.502(j)

A workforce member of Polk County who is the victim of a crime may disclose the PHI of the suspected perpetrator to a law enforcement officer. The PHI disclosed must be limited to the suspect's:

- C Name and address
- C Date and place of birth
- C Social Security number
- C ABO blood type and Rh factor
- C Type of injury
- C Date and time of treatment
- C Date and time of death, if applicable

Decedents

Generally, the same use and disclosure requirements apply to deceased patients as those that apply to living patients. However, there are some exceptions.

Medical Examiners

§164.512(g)(1)

Form: [Disclosure of PHI About the Deceased](#)

Polk County may disclose PHI 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. Use the form for *Disclosure of PHI About the Deceased*. The Privacy Officer should preside over such disclosures, and file all associated documentation. Make sure that the recipients are who they claim to be. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using their request as a guide.

Funeral Directors

§164.512(g)(2)

Form: [Disclosure of PHI About the Deceased](#)

Polk County may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. The covered entity may disclose the PHI prior to the impending death of the patient. Use the form for *Disclosure of PHI About the Deceased*. The Privacy Officer should preside over such disclosures, and file all associated documentation. Make sure that the recipients are who they claim to be. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using their request as a guide.

Organ/Tissue Donation

§164.512(h)

Form: [Disclosure of PHI About the Deceased](#)

Polk County may use or disclose PHI to 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. Use the form for *Disclosure of PHI About the Deceased*. The Privacy Officer should preside over such disclosures, and file all associated documentation. Make sure that the recipients are who they claim to be. See the Verification Requirements section of these Policies and Procedures about how to do that. Disclose the minimum necessary PHI for this purpose using their request as a guide.

Other Uses and Disclosures

§164.508

Uses and disclosures not specifically covered under any other standards in these Policies and Procedures require written authorization.

Authorization to Use or Disclose Protected Health Information

Form: [Authorization to Use or Disclose PHI](#)

[Authorization to Release PHI](#)

In all cases where use or disclosure requires patient authorization, the patient or designated representative must complete the *Authorization to Use or Disclose PHI* form. Assist the patient in completing this form, if necessary. The form must be written in plain language, and must contain:

- C A description of the information to be used or shared; and

- C The name or other specific identification of the person authorized to share or use the information; and
- C The name or other specific identification to whom the covered health entity can disclose or share the information; and
- C A description of the purpose of the requested use or disclosure of information; and
- C An expiration date or an expiration event. The statement “end of research study,” “none” or similar language is sufficient if the authorization is for use of disclosure of PHI for research. This may also include the creation and maintenance of a research database or research depository; and
- C Signature of the person/representative and date and a description of the patient’s or patient representative’s authority; and
- C Statement of the patient’s right to revoke the authorization including the procedures to do this, and any exceptions.
- C A reference to Polk County’s *Notice of Privacy Practices*.
- C A statement that health plans can condition treatment, enrollment or eligibility on an authorization, if applicable. If Polk County cannot do this, you must include a statement to that effect.

FREQUENTLY ASKED QUESTIONS

What is Protected Health Information?

Protected Health Information, or PHI, is information that meets four standards:

- C PHI is information that is communicated or recorded in any medium, written records, oral communication and electronic media that must be protected. For example, if you are talking with a patient and discussing health conditions on the phone, you must be careful that someone in your lobby cannot hear this information. Additionally, information that is on a computer or sent via email must be protected. If you have a computer database of patient files, for example, you must be sure that access to this information is limited. You must also be careful when working on your computer, to protect information on your computer screen.
- C PHI is information that is either collected by your organization or maintained by your organization. For example, you may have a patient’s previous medical record that you did not originate; you must protect these records. Information that is forwarded to someone else must also be protected. For example, if your office forwards information to a billing agency to process your bills, this information must be

protected. You are also responsible for ensuring that the billing agency is keeping information secure.

- C PHI is information that identifies an individual or could identify an individual. This includes basic information such as the person's name, social security number, home address, phone number, and driver's license number. However, it also includes less obvious information like place of employment, names of relatives, or physical descriptions (gender or hair color). Federal law identifies this information as *individually identifiable information*.
- C PHI is information that relates to the individual's condition, treatment, or payment in the past, present, or future. For example, discussions of a patient's previous condition that has long been cured must be protected. When you are discussing treatment with a patient, you must guarantee a secure setting.

How or when can PHI be used?

As previously stated, PHI can be used or disclosed for treatment, payment, or health care operations (see "What is treatment, payment or health care operations?"). There are two more *exceptions* when you may use and disclose PHI without patient/representative approval.

- C Psychotherapy notes. If the person who wrote the notes is the same person who is treating the patient, psychotherapy notes can be used by: an organization for training programs; or for legal defense of the person who created the notes. Psychotherapy notes cannot be used for any other purposes.
- C Marketing under special circumstances. To use PHI for marketing usually requires authorization from the individual. There are two exceptions when authorization is unnecessary: 1) if the communication with the patient is face to face; 2) when the marketing is for a small promotional gift of nominal value provided by the organization. For example, patients sometimes receive free samples when they receive a prescription. This marketing device would not require the written authorization of the patient.

Who is included as an employee, Business Associate, or representative?

You include all employees who work with PHI in the course of meeting their job responsibilities: medical professionals who provide direct health care; or office support workforce members who record information, schedule appointments, and communicate with patients.

You include Business Associates or representatives used by Polk County in delivering services. For example, a doctor's office using a billing agency or a laboratory for services would be included in this policy. When Business Associates are used, a

written contract or agreement must be in place stating that the Business Associate will safeguard PHI, and follow the privacy policies established by Polk County.

What does it mean to receive, create, use, or disclose PHI?

This simply refers to the use of medical information. For example, in the course of treating a single patient, a doctor's office may *receive* medical records from the patient's previous physician, or another physician also treating the patient. They may also *create* new records as they examine and treat the patient. They will *use* private information, such as medical conditions and medications, in order to treat the patient. They may also need to *disclose* the information, if patients request their records, or if patients are referred to another physician. The federal rules, and the policies of Polk County, use the phrase "receive, create, use, or disclose" to cover all possible uses of PHI.

What is "treatment, payment or health care operations" (TPO)?

This simply refers to the ordinary operations of a hospital or doctor's office. Treatment is the actual medical treatment of an individual, and may include medical examinations, patient referrals, or patient conferences. Payment is the processing, billing, and collection of payment for services or medical supplies. Health care operations include business management and administrative activities required to provide services. For example, administrative procedures would include implementing security policies.

What are we required to do?

You are required to ask a patient before making any disclosures. You are required to track all requests for information and all disclosures. You must document all of the following:

- C The person and organization making the request;
- C Date and time of the request;
- C The specific PHI that is requested;
- C The purpose of the PHI;
- C Notification to the Patient;
- C Patient authorization, restrictions or prohibition of the request.

If the patient grants disclosure, then you must document the following:

- C Any restrictions on the PHI;
- C The specific PHI being released;
- C Date and time of the release;
- C Location of the release (such as the delivery address).

For example, a dentist's office calls you to ask for a patient's x-rays and treatment records regarding a recent jaw injury. First, since the request is not in writing, you should immediately document the request. Second, before any other action is taken,

you must ask the patient if this disclosure is acceptable. Be sure to tell the patient who is requesting the information, what information is being requested, and the time frame of the request. You should document this communication. Third, document the patient's response. The patient has the right to allow, restrict, or prohibit the disclosure. If the patient permits the disclosure, then you can proceed, being careful to document the information.

All disclosure information should be reported to the Privacy Officer. An accounting of all disclosures must be maintained for six years.

When does the patient need to be notified?

The patient must be notified *before* the disclosure is made. The patient must have time to restrict the disclosure. It is the patient's right to agree to, prohibit or restrict the disclosure of PHI.

What does the patient need to know?

The patient needs to know everything about the disclosure *before* you disclose any PHI. Be sure to tell the patient *who* is requesting the information, *what* they are requesting, *why* they are making the request, and *when* they would like to receive it. It is the patient's right to agree to, prohibit, or restrict the disclosure of PHI.

Under what circumstances can PHI be used without patient authorization?

As you already know, PHI can be used for TPO. (For more information on TPO see "What is treatment, payment or health care operations?") *Any* use outside of the TPO standards, requires patient authorization.

However, there are special circumstances that would allow you to use PHI without patient authorization *or* allowing the patient an opportunity to agree or object. In most circumstances, these exceptions were created to protect the patient and public. You may use or disclose PHI without authorization or opportunity for the following reasons:

- C Requirements of Law
- C Public Health Activities
- C Victims Of Abuse, Neglect, Or Domestic Violence
- C Health Oversight Activities
- C Judicial And Administrative Proceedings
- C Law Enforcement Purposes
- C Decedents
- C Cadaveric Organ, Eye, Or Tissue Donation Purposes
- C Research Purposes
- C Aversions of Serious Threat To Health Or Safety
- C Specialized Government Functions
- C Workers' Compensation

When can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

There are special circumstances allowing you to use PHI without patient authorization *and* without allowing the patient to agree or object. In most circumstances, these items were created to protect the patient and the public. You may use or disclose PHI without authorization or opportunity to object, for public health activities, victims of abuse, neglect or domestic violence, health oversight activities, judicial and administrative proceedings, decedents, cadaveric organ, eye, or tissue donation purposes, research purposes, aversions of serious threat to health or safety, specialized government functions, or for purposes of workers' compensation. The requirements for disclosure are summarized below.

Note: In every instance, you must include the Privacy Officer, and you must document all details of the disclosure. Even though the same notifications may not be required, you are always responsible for carefully documenting any disclosure.

For public health activities, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

A public health authority may be authorized by law to collect PHI in order to prevent or control disease, injury, or disability. A public health authority includes anyone authorized by law to act in that capacity. Some examples of public health activities include: county health departments, a state welfare or child services organizations, or the Federal Drug Administration.

Public Health authorities are allowed to collect PHI for several reasons, and you are allowed to disclose such information without patient authorization and without allowing the patient to agree or object. For example, a public health department may collect vital records such as death and birth information or they may lead public health investigations into a widespread occurrence of a disease. Another example could include the Federal Drug Administration tracking a recalled medication, or investigating a drug or food supplement that may have negative side effects.

PHI may also be disclosed in cases of people being exposed to a communicable disease or at risk of contracting or spreading a disease. PHI may be disclosed in order to notify and/or treat an infected person.

PHI may also be disclosed to an employer if the employee is engaged in providing health care, as it relates to medical surveillance or to a work-related illness or injury. In this case however, the employer must provide notice to the employee that PHI will be disclosed.

For victims of abuse, neglect or domestic violence, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

Patients who you suspect are victims of abuse, neglect, or domestic violence fall into a special category. Health care providers may disclose PHI to a law enforcement agency, if they reasonably believe a patient may be a victim of abuse, neglect, or domestic violence.

In these cases, you must inform the patient that you plan to, or that you have, disclosed PHI. If, in your professional judgment, you believe that this may be the patient them at further risk, the patient does not need to be notified. If you reasonably suspect that the personal representative may be the cause of the abuse or neglect, then you are not required to inform the representative either. These provisions of the law are meant to protect the patient and should be used only after careful thought.

For health oversight activities, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You may disclose PHI to a health oversight agency for their supervisory responsibilities. A health oversight agency is a government agency that has, as part or all of its responsibilities, oversight of any of the following:

- C Healthcare organizations;
- C Government benefit programs that use healthcare information to determine eligibility;
- C Organizations that fall under government regulatory programs that use healthcare information;
- C Organizations subject to civil rights laws for which health information is necessary in determining compliance.

A health oversight organization may collect PHI for audits, civil, administrative, or criminal investigations, inspections, licensure or disciplinary action, or other activities necessary for oversight. For example, a State department of business or commerce may need PHI in order to confirm that a medical professional is complying with state law.

There is *one exception* to this standard. If the individual is the subject of the investigation or activity, and it is not related to the receipt of health care or a claim for public benefits, then the PHI cannot be disclosed.

For judicial and administrative proceedings, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

There are judicial and administrative proceedings that require PHI disclosure without patient authorization and without allowing a patient to agree or object. PHI can be disclosed under the following circumstances.

- C You receive a court order.
- C You receive a subpoena, discovery request, or other legal document AND a written statement of confidentiality.

The difference between a court order and other legal document is the source. A court order comes from a court and is signed by a judge and you must comply.

A legal document, like a subpoena, may come from an attorney in the course of trying or investigating a case. It is still a binding legal document, and in some cases is still signed by a judge. However, you must meet the following additional requirements:

- C You must get satisfactory assurance that the patient has been give notice from the party seeking the information. The party must provide a written statement that they have made a good faith attempt to contact the patient with sufficient notice and time. They must also demonstrate that the patient did not file objections or that the objections have been resolved.

OR

- C The party seeking the information has secured a qualified protective order to keep the information secure. The qualified protective order must prohibit parties from using or disclosing the PHI for anything other than the current litigation and it must ensure that the PHI is returned to the originating organization or that it will be destroyed.

For law enforcement purposes, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You can disclose PHI to a law enforcement official or other government entity charged with this responsibility without patient authorization and without allowing the patient to agree or object for these reasons:

- C You can provide PHI as already required by law. For example, suspected cases of child abuse or neglect must be reported to a law enforcement officer.
- C Another example of PHI disclosures as required by law is court related requests. You can provide PHI in compliance with a court order, grand jury subpoena, or a civil administrative request. In this case, the PHI requested must be relevant to the situation; it must be specific and limited in scope, and should only be turned over when de-identified information could not be used.
- C Limited information for identification and location purposes can be provided to law enforcement authorities without authorization or notice. You can provide PHI for identifying or locating a suspect, fugitive, material witness, or missing person. The following is the limited information that can be provided:
 - o Name and address;
 - o Date and place of birth;
 - o Social security number;

- o ABO blood type and Rh factor;
- o Type of injury;
- o Date and time of treatment;
- o Date and time of death (if applicable);
- o A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos.

You cannot disclose any PHI related to a persons DNA, dental records, or typing, samples or analysis of body fluids or tissue.

C If someone is a victim of a crime or suspected to be a victim of a crime, PHI can be disclosed. You must have the individual's consent to the disclosure, or proof that the individual is incapacity or emergency circumstances prevent obtaining consent.

C You may disclose PHI to a law enforcement officer about an individual who has died if there is suspicion that death may be the result of criminal conduct.

C You can also disclose PHI to a law enforcement official if you believe such information is evidence of criminal conduct that occurred on Polk County's premises.

C Health care providers who are providing emergency health care, can disclose PHI to a law enforcement official in order to alert law enforcement to:

- o The commission and nature of a crime;
- o The location of such crime or of the victim(s) of the crime;
- o The identity, description, and location of the perpetrator of the crime.

For information about decedents, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining the cause of death, or other reasons. You may also disclose PHI to funeral directors, as necessary to carry out their duties with respect to the decedent. This does not require patient authorization.

For cadaveric organ, eye or tissue donation purposes, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You may disclose PHI to organizations engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation, and transplants. This does not require patient authorization.

For research purposes, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You may use and disclose PHI for research, regardless of the funding source, without patient authorization and without allowing the patient to agree or object. The following requirements must be met:

- C A waiver authorization by An Institutional Review Board (IRB) or a privacy board must be in place. A privacy board must be composed of members with varying background and professions and must include at least one member who is not affiliated with the covered entity or with the research organization. The waiver must include identification of the board and date of action, protection of PHI and adequate written assurances, and a description of PHI requested. A review by the board must be signed.
- C If the research organization reviews the PHI prior to research, you must be sure that released PHI is used only for preparing research protocol and that no PHI is removed from the premises.
- C Decedents' PHI can be used by research organizations that secure the contents.

In order to avert a serious threat to health or safety, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

You can disclose PHI if:

C You believe, in good faith, that a disclosure of PHI is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is made to a person(s) reasonably able to prevent or lessen the threat. However, PHI related to counseling or therapy cannot be disclosed.

C It is necessary for law enforcement authorities to identify or apprehend an individual who has admitted to a violent crime and you believe serious physical harm may have occurred. You can also release PHI if it appears that a patient/ individual has escaped from a correctional facility or lawful custody.

For specialized government functions, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

PHI can be disclosed for: military and veterans activities; national security and intelligence activities; protective services for the President and others; medical suitability determinations; correctional institutions and other law enforcement custodial situations; and government programs providing public benefits. Each circumstance has special requirements.

C You may disclose PHI of armed forces personnel for activities necessary by appropriate military command authorities.

- C An organization that is a component of the Department of Defense or Department of Transportation may disclose to the Department of Veterans Affairs PHI of armed forces personnel upon their separation or discharge.
- C An organization that is part of the Department of Veterans Affairs may use or disclose PHI for eligibility or entitlement for benefits.
- C An organization may use or disclose PHI of foreign military personnel to appropriate foreign military authority for any of the reasons stated above.
- C An organization may disclose PHI to federal officials for intelligence, counter-intelligence, and other national security activities under the National Security Act.
- C An organization may disclose PHI to federal officials for the protection of the president, other heads of state, or foreign heads of state.
- C An organization that is part of the Department of State may use PHI to make medical suitability determinations for security clearances, availability for service, or for families to accompany Foreign Service members abroad.
- C You may disclose PHI to a correctional institution or a law enforcement official who has custody of an individual for: the provision of health care to that individual; for the health and safety of other inmates, officers or employees; and for law enforcement or administrative purposes. Once the individual has been released, paroled, or under supervised release, this standard does not apply.
- C Government program organizations providing public benefits may use or disclose PHI for determining eligibility or enrollment. They may also disclose PHI to other government agencies if they both serve the same populations.

For workers' compensation purposes, when can PHI be disclosed without patient authorization and without allowing the patient to agree or object?

An organization may disclose PHI in order to comply with workers' compensation laws. In order to provide benefits for work-related injuries or illness without regard to fault, such information can be disclosed without patient authorization and without allowing the patient to agree or object.

AUTHORITY

- 45 CFR §164.502 (2002)
- 45 CFR §164.506 (2002)
- 45 CFR §164.508 (2002)
- 45 CFR §164.510 (2002)
- 45 CFR §164.512 (2002) and 45 CFR §164.514 (f) and (g) (2002)